Legislative Analysis

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INTERSTATE MEDICAL LICENSURE COMPACT

House Bills 4066 and 4067 as enacted
Public Acts 563 and 524 of 2018
Sponsor: Rep. Jim Tedder
House Committee: Health Policy
Senate Committee: Health Policy
Complete to 3-30-20

BRIEF SUMMARY: House Bills 4066 and 4067 amend the Public Health Code to enact into law the "Interstate Medical Licensure Compact."

FISCAL IMPACT: House Bill 4066 would have a significant fiscal impact—of undetermined magnitude—on the Department of Licensing and Regulatory Affairs (LARA). The bill would likely not have any fiscal impact on other units of state or local government. House Bill 4067 does not appear to have a significant fiscal impact on units of state or local government. (A full analysis follows in **Fiscal Information**, below.)

THE APPARENT PROBLEM:

Telemedicine technologies—including video-conferencing, internet-based applications, store-and-forward imaging, streaming media, and phone and wireless communications—make it easier for physicians to practice medicine without regard to state boundaries, allowing patients access to care wherever they are.

However, physicians are licensed to practice medicine by professional state licensing boards in each of the 50 states. They work within their scopes of practice only within the states in which they are licensed.

A written document—the Interstate Medical Licensure Compact—has been drafted as 'model legislation' by state medical board representatives, with assistance from the Federation of State Medical Boards and the Council of State Governments.[1] The interstate compact will allow physicians to be licensed in many states simultaneously and promptly, after the respective state legislatures enact the 'model language' of the compact into state law. (For additional information, see **Background Information**, below.)

Legislation was introduced in Michigan that constitutes the proposed Interstate Medical Licensure Compact. It is based upon 'model legislation' that, as of March 2020, has been enacted in 28 other states and is under consideration in at least five more.[2]

[1] More information about the model legislation being advanced by the Federation of State Medical Boards can be found at http://www.fsmb.org/

[2] According to the Interstate Medical Licensure Compact (IMLC) website, http://www.imlcc.org/:
IMLC members: *Alabama, Arizona, Colorado, Guam, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, North Dakota, South Dakota, Tennessee, Utah, Washington, West Virginia, Wisconsin, Wyoming* (23 states and Guam)

THE CONTENT OF THE BILLS:

House Bill 4066 is the main bill, while House Bill 4067 is complementary legislation. Both bills take effect March 28, 2019, with the compact in HB 4066 taking effect September 23, 2019 (180 days after the effective date of HB 4066). Further, the compact will be repealed on March 28, 2022 (three years after the effective date of HB 4066). A detailed description of each bill follows.

House Bill 4066

House Bill 4066 adds a single section to the Public Health Code that comprises the 24 sections of the Interstate Medical Licensure Compact, described below.

Section 1 – Purpose. The compact declares as its purpose the development of a comprehensive process that complements the existing regulatory authority of state medical boards and allows physicians to become licensed in multiple states, thus enhancing license portability and ensuring patient safety. The compact states that it creates another pathway for licensure but does not otherwise change a state's existing medical practice act. The compact affirms that the practice of medicine occurs where the patient is located at the time of the physician-patient encounter and therefore requires the physician to be under the jurisdiction of the state medical board where the patient is located.

Section 2 – Definitions. This section defines 15 terms, including '*physician*,' '*interstate commission*,' '*medical practice act*,' '*member state,' 'practice of medicine,' 'offense,'* and *'rule.'*

Section 3 – Eligibility. This section defines the eligibility requirements a physician must meet to receive an expedited license under the compact. (See **Background**, below.)

Section 4 – Designation of State of Principal License. A physician must designate a member state (one that has enacted the compact) as his or her state of principal license for purposes of registration for expedited licensure under the compact. This must be a state where he or she is licensed that is also his or her state of residence, where at least 25% of his or her practice occurs, or where his or her employer is located.

Section 5 – Application and Issuance of Expedited Licensure. This section describes the process for a physician seeking licensure under compact, including filing an application for an expedited license, verification of eligibility, registration, and payment of any fees.

Section 6 – Fees for Expedited Licensure. A member state issuing an expedited license may impose a fee for a license issued or renewed through the compact. The Interstate Medical Licensure Compact Commission ("interstate commission") may develop rules

IMLC passed; implementation in process: *Georgia, Kentucky, Oklahoma, Pennsylvania, Vermont, Washington D.C.* (5 states and D.C.)
Compact legislation introduced: *Missouri, New Jersey, New York, Rhode Island, South Carolina* (5 states)

regarding fees for expedited licenses, but the rules cannot limit the authority of a member state to impose and determine the amount of a fee.

Section 7 – Renewal and Continued Participation. This section describes the process for an eligible physician to renew an expedited license with the interstate commission, including not having been subject to criminal penalties or license-related sanctions, compliance with continuing professional development or continuing medical education requirements, and payment of renewal fees.

Section 8 – Coordinated Information System. The interstate commission must establish a database of all physicians who are licensed or have applied for expedited licensure. Member boards would have to submit complaint, disciplinary, and investigatory information about physicians in the database. This information is confidential but can be shared among member states for investigatory or disciplinary matters.

Section 9 – Joint Investigations. A member board may participate with other member boards in joint investigations of physicians. A subpoena issued by a member state is enforceable in other member states, and member states can share investigatory information, including licensure and disciplinary records of physicians.

Section 10 – Disciplinary Actions. Disciplinary action taken by a member board against a compact-licensed physician constitutes 'unprofessional conduct' that may be subject to discipline by other member boards. If a member board revokes or suspends a physician's license, then all licenses issued to that physician by other member boards are automatically suspended for 90 days to allow those boards to investigate. If the member board of the physician's state of principal license revokes or suspends his or her license, then all licenses issued to him or her by other member boards are automatically placed on the same status. If the member board in the state of principal license subsequently reinstates the physician's license, however, reinstatement by the other member boards does not happen automatically but requires action by those boards consistent with their state laws.

Section 11 – Interstate Medical Licensure Compact Commission. This section creates the Interstate Medical Licensure Compact Commission to administer the compact. Each member state appoints two voting representatives to serve as commissioners. A member state in which both allopathic and osteopathic licensing boards operate must appoint one representative from each licensing board.

The interstate commission must meet at least once each year, have bylaws, record minutes, provide minutes to members, allot one vote to each commissioner, and only conduct business with a majority of commissioners present. Commission meetings must provide public notice and be open to the public. (However, the bill describes seven instances in which the commission may vote to work in a closed session.) Information and official records must be available to the public. The commission must establish an executive committee and officers, who, except for rulemaking, can act on behalf of the commission.

Section 12 – Powers and Duties of the Interstate Commission. This section describes the commission's powers and duties, which include, upon request of a member state or a member board, issuing advisory opinions as to the meaning of the compact or its bylaws, rules, or actions. The commission must develop a budget and report annually to the legislatures and governors of member states about its activities during the previous year. These reports must include reports of financial audits.

Section 13 – Finance Powers. The interstate commission may collect an annual assessment from each member state to cover the costs of its operations and activities. The total assessment, subject to appropriation, must cover the approved annual budget. The aggregate annual assessment amount must be allocated using a formula to be determined by the commission and imposed by rule.

Section 14 – Organization and Operation of the Interstate Commission. The interstate commission must adopt bylaws within a year of its first meeting. The commission must annually elect or appoint a chairperson, vice-chairperson, and treasurer, who serve without compensation. The officers and employees of the commission are immune from liability, either personally or in their official capacity, for a claim arising from an act or omission occurring within the scope of their duties. The commission must defend its employees when they are sued. To the extent not covered by the state involved or the commission, the employees of the commission are held harmless in the amount of a settlement or judgment. However, these protections do not apply if the act or omission is the result of the employee's intentional or willful and wanton misconduct.

Section 15 – Rulemaking Functions of the Interstate Commission. The interstate commission must promulgate reasonable rules to achieve the purposes of the compact. The compact defines a rule as a written statement by the commission that is of general applicability; that implements, interprets, or prescribes a policy or provision of the compact or an organizational, procedural, or practice requirement of the commission; and that has the force of statutory law in a member state as long as it is not inconsistent with the laws of that member state. The rules must be made under a rulemaking process that conforms to the "Model State Administrative Procedure Act" of 2010. Within 30 days of a rule's promulgation, a person may file a petition for its judicial review.

Section 16 – Oversight of Interstate Compact. All branches of state government in each member state must enforce the compact and take all actions necessary to effectuate its purposes. The compact and its rules have standing as statutory law but do not override existing state authority to regulate the practice of medicine. The interstate commission is entitled to service of process and has standing to intervene in any state judicial or administrative proceeding pertaining to medical licensure that may affect the powers, responsibilities, or actions of the commission.

Section 17 – Enforcement of Interstate Compact. The commission may initiate an action in the U.S. District Court for the District of Columbia, or in the federal district where the commission has its principal office, to enforce compliance with the compact and its rules and bylaws against a member state that is not in compliance.

Section 18 – Default Procedures. This section describes procedures concerning a member state that is found to have defaulted on its compact responsibilities (e.g., by not performing obligations imposed on it by the compact). The commission must notify the state of the default and how to remedy it and provide remedial training and specific technical assistance regarding the default. If the state fails to cure the default, it can be terminated from the compact upon a majority vote of the commission. That decision of the commission is appealable in court.

Section 19 – Dispute Resolution. When requested by a member state, the interstate commission must attempt to resolve disputes subject to the compact that may arise among member states or member boards. The commission also must promulgate rules that provide for both mediation and binding dispute resolution.

Section 20 – Effectiveness and Amendments. The compact becomes effective and binding after legislative enactment into law by at least seven states. Nonmember states are invited to participate in the activities of the interstate commission on a nonvoting basis before they adopt the compact. The interstate commission may propose amendments to the compact for enactment by member states, but no such amendment can take effect until enacted into law by all of the member states.

Section 21 – Withdrawal. To withdraw from the compact, a state legislature must repeal the statute that enacted the compact. The withdrawal cannot take effect until one year after the date of the repeal. A state considering withdrawal must notify the interstate commission, which in turn will notify the other member states.

Section 22 – Dissolution. The compact will dissolve when its members are reduced to one member state.

Section 23 – Severability and Construction. The provisions of the compact are declared to be severable; if a phrase, clause, sentence, or provision is held to be unenforceable, the compact's remaining provisions are still enforceable. The provisions of the compact are intended to be liberally construed to effectuate its purposes, and nothing in the compact is intended to prohibit the applicability of other compacts in member states.

Section 24 – Binding Effect of Compact and Other Laws. This section specifies, among other things, that all laws in a member state that are in conflict with the compact are superseded to the extent of the conflict. Further, all lawful actions of the interstate commission, including its rules and bylaws, are binding on the member states.

Effective Date and Sunset. House Bill 4066 took effect March 28, 2019, and specifies that the compact takes effect 180 days after that date (September 23). In addition, the compact is repealed effective March 28, 2022 (sometimes called a "sunset" provision).

MCL 333.16189

House Bill 4067

House Bill 4067 amends the Public Health Code to specify that any allopathic physician who holds an expedited license under the Interstate Medical Licensure Compact is authorized to engage in the practice of medicine, while any osteopathic physician who holds an expedited license is authorized to practice osteopathic medicine and surgery. An individual who has an expedited license is considered a physician who is licensed under the code.

The bill also specifies that a member board of this state could may disclose information about an individual under the compact, and that a subpoena issued under the compact is only enforceable, if certain requirements enumerated in the bill are met. Applicants for an expedited license must submit their fingerprints and consent to a criminal background check, and the fingerprints must be retained by the Michigan Department of State Police (MSP) in a database.

Additionally, the bill provides that a health facility or agency may not require a physician licensed under the code to seek licensure through the compact as a condition of initial or continued employment, but may require the physician to obtain and maintain an M.D. or D.O. license in one or more other states, as long as the physician is able to do so.

MCL 333.17001 and 333.17501

BACKGROUND INFORMATION:

For more information about the Interstate Medical Licensure Compact, including its impetus, its authors, and the state legislatures that have adopted it, please see http://www.imlcc.org/

Definition of "physician" under the compact

The compact includes a definition of "physician" that thousands of Michigan doctors could not meet, largely due to its requirement that practitioners be board-certified in their specialty areas of medical expertise.

Specifically, under House Bill 4066, "physician" is defined to mean a person who meets all of the following:

1. Is a graduate of a medical school accredited by the liaison committee on medical education, the commission on osteopathic college accreditation, or a medical school listed in the international medical education directory or its equivalent.
2. Passed each component of the United States medical licensing examination (USMLE) or the comprehensive osteopathic medical licensing examination (COMLEX-USA) within three attempts, or any of its predecessor examinations accepted by a state medical board as an equivalent examination for licensure purposes.
3. Successfully completed graduate medical education approved by the accreditation council for graduate medical education or the American Osteopathic Association.

4. Holds specialty certification or a time-unlimited specialty certificate recognized by the American Board of Medical Specialties or the American Osteopathic Association's Bureau of Osteopathic Specialists. (However, once a physician is initially determined to be eligible for expedited licensure through the compact, this certification does not have to be maintained.)
5. Possesses a full and unrestricted license to engage in the practice of medicine issued by a member board.
6. Has never been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction.
7. Has never held a license authorizing the practice of medicine subjected to discipline by a licensing agency in any state, federal or foreign jurisdiction, excluding any action related to non-payment of fees related to a license.
8. Has never had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration.
9. Is not under active investigation by a licensing agency or law enforcement authority in any state federal, or foreign jurisdiction.

A physician must meet all of the above requirements to be eligible for an expedited license under the compact.

FISCAL INFORMATION:

House Bill 4066 would have a significant fiscal impact—of undetermined magnitude—on LARA. The bill would likely not have any fiscal impact on other units of state or local government.

The Interstate Medical Licensure Compact would provide a supplementary process for the licensure of physicians practicing across state lines (expedited licensure). The magnitude of the fiscal impact would depend upon several factors, including: the number of physicians in Michigan applying through the expedited process to practice medicine in other states, the level of costs associated with the administration of membership within the compact, and the level of fees that the department collects.

The bill would require the Bureau of Professional Licensing to issue a letter of qualification for each Michigan physician applying for licensure through the compact. This process would entail background investigations on applicants, but the bill makes no mention to whether fees could be collected for this function. The department would receive fee revenue for out-of-state physicians applying through the compact for licensure to practice in Michigan. Since LARA is empowered to determine the amount of the fees to issue expedited licenses, it may be assumed that the amount of the fees would likely be sufficient to adequately offset LARA's costs. Administrative costs would likely be incurred for LARA's participation in joint investigations and disciplinary actions related to physicians located within other states, and for IT costs related to information sharing between the department and the Interstate Commission. The Interstate Commission would be allowed to levy an annual assessment on member states to offset the Commission's administrative

and information technology costs; this cost would likely be borne by existing department resources.

House Bill 4067 would have a minor fiscal impact on the Department of State Police (MSP) and no impact on other units of state or local government. The department may experience indeterminate IT cost increases to accommodate provisions of the bill. The bill would require MSP to collect fingerprints from applicants and to conduct criminal history checks. Applicants would be responsible for paying the fees for fingerprinting and criminal history checks, which presently total $42 ($30 state-level for the MSP check and $12 for the Federal Bureau of Investigation check). Since applicants would cover fingerprinting and record check costs, this process would not have a net fiscal impact.

ARGUMENTS:

For:

Proponents of the bills—chiefly hospital systems—argued that facilitating expedited medical licensure through the Interstate Medical Licensure Compact would serve to protect state sovereignty. They pointed out that, unlike preemption under federal law, the compact allows the states and the state medical boards to continue to exercise their authority to protect patient welfare and regulate physicians.

Proponents argued, too, that the Interstate Medical Licensure Compact enhances patient accessibility to physicians—especially specialists—when patients live in remote and underserved areas of the country. If licensed in several states, physicians are able to consult with patients in underserved areas electronically through hospital-based telemedicine programs.

Against:

Opponents of the bills argued that it is far too early to join the interstate compact, because neither the compact's rules nor its costs can be known at this time. The Interstate Medical Licensure Compact is not yet fully implemented. Indeed, the chairperson of the compact, Jon Thomas, acknowledged in his committee testimony that the compact is "building the plane as we're flying it," because supporters did not want to invest millions of dollars in building the infrastructure from the ground up before the compact was functional. Five states whose legislatures adopted the IMLC paused implementation, largely because of a dispute with the Federal Bureau of Investigation over access to its criminal background check system. Even some of the bills' supporters advised waiting until more information is available to state officials before voting to join the interstate compact.

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