

**LEGISLATIVE FISCAL ESTIMATE**  
**ASSEMBLY, No. 5311**  
**STATE OF NEW JERSEY**  
**220th LEGISLATURE**

DATED: DECEMBER 8, 2023

**SUMMARY**

**Synopsis:** Enters New Jersey into Counseling Compact.

**Type of Impact:** Annual increase in State expenditures; Annual decrease in State revenues.

**Agencies Affected:** Division of Consumer Affairs – Department of Law and Public Safety.

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Annual</u></b>
<b>State Expenditure Increase</b>	Indeterminate
<b>State Revenue Decrease</b>	Indeterminate

- The Office of Legislative Services (OLS) concludes that annual State expenditures will increase by an indeterminate amount under the bill, which will enter the State into the interstate Counseling Compact. The OLS cannot quantify the net fiscal impact of the bill, given a lack of information on the impact that the State’s participation in the compact may have on operating costs for the Professional Counselor Examiners Committee of the State Board of Marriage and Family Therapy Examiners, which licenses professional counselors.
- Factors that will influence the State’s operational costs under the bill include the amount of the annual fee that the State may be charged as a compact member, and the costs for the State to align its professional counselor licensing data with the licensure data system that all compact member states utilize.
- Annual State revenues may fall by a marginal amount, depending upon the number of licensed professional counselors living in a remote compact member state who may seek to convert a State license to a privilege to practice. To the extent that the State’s fee for a privilege to practice as a professional counselor equals or nears the fee charged for a State license, State revenues may be only marginally affected.

## **BILL DESCRIPTION**

This bill enters New Jersey into the interstate Counseling Compact, which would allow professional counselors, who are licensed and residing in a compact member state, to practice in other compact member states without the need for multiple licenses. The purpose of this compact is to facilitate interstate practice of licensed professional counselors with the goal of improving public access to professional counseling services, while also preserving the State's regulatory authority over the profession through the State licensure process.

Under the compact, the State would be required to grant the privilege to practice to a licensed professional counselor who holds an unrestricted license, in accordance with the rules of the compact, in a compact member state.

The bill provides that a compact member state may charge applicants a fee for granting the privilege to practice. Licensed professional counselors, moreover, are required to pay any applicable fees, including any fees assessed by a compact member state for the privilege to practice. A compact member state is also authorized to regulate, in accordance with the state's laws, a licensee who is providing professional counselor services remotely, under a privilege to practice; such regulatory action may include the imposition of fines or other adverse actions, as necessary to protect the health and safety of the state's residents.

Compact member states, additionally, will recognize the ability of a licensed professional counselor, who is licensed by another compact member state, to practice professional counseling in any member state via telehealth under a privilege to practice.

Although the bill maintains a home state's power to take adverse action against a license issued by that home state, it also authorizes a remote state to investigate and take adverse actions against a privilege to practice issued by that remote state. If allowed under state law, a remote state may recover from a licensee any investigative costs related to an adverse action taken against the licensee.

The bill additionally establishes the Counseling Compact Commission as an instrumentality of the compact member states. The commission is endowed with broad authorities, which include the power to: establish bylaws and promulgate rules; hire staff; contract for services; accept donations and grants, including of equipment and services; lease, purchase, own, and accept appropriate gifts or donations of property; sell, lease, or otherwise dispose of any property; establish a budget and make expenditures; and borrow money. Each compact member state will have one representative on the commission, who will be selected by the state's licensing board.

The bill explicitly provides that the compact commission may assess an annual fee from each member state or impose fees on other parties, in an amount equal to the total cost of the compact's operations, less any revenue provided by outside sources. The bill further directs that the aggregate annual assessment amount will be allocated based on a formula to be established in regulations promulgated by the commission.

The compact took effect in April 2022, once it had been adopted in ten states. As of September 1, 2023, 30 states have enacted the compact.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received. According to the Division of Consumer Affairs in the Department of Law and Public Safety, the division's fiscal note is under review as of the date of publication of this fiscal analysis.

***OFFICE OF LEGISLATIVE SERVICES***

The OLS determines that annual State expenditures will increase by an indeterminate amount, and State revenues may fall by a marginal amount, under the bill. The OLS cannot quantify the net fiscal impact of the bill on the Professional Counselor Examiners Committee of the State Board of Marriage and Family Therapy Examiners, given a lack of sufficient information regarding:

1) Increases in committee and board operating expenses to join the compact and regulate additional out-of-state professional counselors who are granted a privilege to practice in the State. The Division of Consumer Affairs does not have information on the number of professional counselors residing in compact member states who may apply for a privilege to practice in the State. As such, the extent to which the board's operational costs to process privilege to practice applications, monitor counselors with a privilege to practice in the State, and provide compact member states with information regarding State licensed professional counselors cannot be determined.

The committee also may incur one-time costs to align its existing data system for licensed professional counselors with the requirements of the compact's data system. Without information regarding the extent to which the committee's existing system aligns with the requirements of the compact's data system, the OLS cannot determine the costs associated with the data system requirements established under the bill.

Another factor affecting the State's costs to join the compact is the annual fee that the compact commission may assess from member states. A representative of the Counseling Compact noted that, as of late 2023, the compact commission does not plan to assess an annual fee from member states because financial contributions and grants from outside sources are sufficient to cover the compact's current operating costs. In future years, however, the compact commission may charge member states an annual fee in order to cover the compact's annual operational costs.

2) Decreases in State revenues from professional counselor licensing fees charged to professional counselors, currently living in a compact member state, who may relinquish their existing State in favor of a privilege to practice under the compact. The OLS cannot determine with any certainty, using publicly available sources, the number of licensed professional counselors living in a compact member state who may seek to convert a State license to a privilege to practice. The number could be reduced by the fact that neither New York nor Pennsylvania have adopted the compact or have pending legislation to join the compact; Delaware is the only state bordering New Jersey that has joined the compact. However, the fact that the bill allows professional counselors, who reside in a compact member state, to apply for a privilege to practice via telemedicine in a remote compact state could significantly reduce the number of out-of-state professional counselors seeking State licensure.

The revenue impact of such a shift by out-of-state professional counselors will be determined by the amount of the fee that the State may charge for a privilege to practice, as permitted under the bill. Given that professional counselor licenses are renewed biennially, on December 1<sup>st</sup> of every even numbered year, State revenues would not be affected until FY 2025. To the extent that the State's fee for a privilege to practice matches or nears the \$250 charged for an initial or renewal license, State revenues may be only marginally affected.

As of October 2023, the committee regulated 7,264 licensed professional counselors. However, it is unclear how many of these licensed professional counselors have active versus inactive licenses, and how many hold a New Jersey home state license versus those who are issued a New Jersey license under reciprocity with another state that the committee has identified as having licensing requirements similar to those of New Jersey.

Additionally, licensed professional counselors are authorized under current law to engage in telemedicine and telehealth, provided the services meet the standard of care applicable for the same services when provided in person. Authorization to engage in telemedicine and telehealth extends to a licensed professional counselor who is located in the State and provides professional counseling services to a client located either in the State or in another state, and to a State licensed professional counselor who is located outside of the State and provides such services to a client located in the State.

New Jersey currently participates in four interstate professional licensing compacts for health professionals: the Nurse Licensure Compact, the Interstate Medical Licensure Compact, the Psychology Interjurisdictional Compact, and the Physical Therapy Licensure Compact. Moreover, five additional bills that would enter the State into various health professional interstate licensure compacts have been introduced during the current legislative session.

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).