

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 791
Committee Substitute Favorable 7/21/21
PROPOSED SENATE COMMITTEE SUBSTITUTE H791-PCS40816-BC-76

Short Title: Lic. Counselors Compact/DHHS Contracting.

(Public)

Sponsors:

Referred to:

May 4, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH AND ENTER INTO AN INTERSTATE COMPACT FOR THE
3 PRACTICE OF PROFESSIONAL COUNSELING AND TO IMPLEMENT
4 PROCEDURES FOR CONTRACT REFORM WITHIN THE DEPARTMENT OF
5 HEALTH AND HUMAN SERVICES.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Chapter 90 of the General Statutes is amended by adding a new Article
8 to read:

9 "Article 24A.

10 "Professional Counseling Licensure Compact.

11 **"§ 90-349.1. Purpose.**

12 The purpose of this Compact is to facilitate interstate practice of licensed professional
13 counselors with the goal of improving public access to professional counseling services. The
14 practice of professional counseling occurs in the state where the patient or client is located at the
15 time of the counseling services. The Compact preserves the regulatory authority of states to
16 protect public health and safety through the current system of state licensure. This Compact is
17 designed to achieve the following objectives:

- 18 (1) Increase public access to professional counseling services by providing for the
19 mutual recognition of other member state licenses.
20 (2) Enhance the states' ability to protect the public's health and safety.
21 (3) Encourage the cooperation of member states in regulating multistate licensed
22 professional counselors.
23 (4) Support spouses of relocating active duty military personnel.
24 (5) Enhance the exchange of licensure, investigative, and disciplinary information
25 among member states.
26 (6) Facilitate the use of telehealth technology in order to increase access to
27 professional counseling services.
28 (7) Support the uniformity of professional counseling licensure requirements
29 throughout the states to promote public safety and public health benefits.
30 (8) Invest all member states with the authority to hold a licensed professional
31 counselor accountable for meeting all state practice laws in the state in which
32 the client is located at the time care is rendered through the mutual recognition
33 of member state licenses.
34 (9) Eliminate the necessity for licenses in multiple states.



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- 1 (10) Provide opportunities for interstate practice by licensed professional
2 counselors who meet uniform licensure requirements.

3 **"§ 90-349.2. Definitions.**

4 As used in this Compact, and except as otherwise provided, the following definitions shall
5 apply:

- 6 (1) Active duty military. – Full-time duty status in the active uniformed service
7 of the United States, including members of the National Guard and Reserve
8 on active duty orders pursuant to 10 U.S.C. Chapter 1209 and 10 U.S.C.
9 Chapter 1211.
- 10 (2) Adverse action. – Any administrative, civil, equitable, or criminal action
11 permitted by a state's laws which is imposed by a licensing board or other
12 authority against a licensed professional counselor, including actions against
13 an individual's license or privilege to practice, such as revocation, suspension,
14 probation, monitoring of the licensee, limitation on the licensee's practice, or
15 any other encumbrance on licensure affecting a licensed professional
16 counselor's authorization to practice, including issuance of a cease and desist
17 action.
- 18 (3) Alternative program. – A nondisciplinary monitoring or remediation process
19 approved by a professional counseling licensing board to address impaired
20 practitioners.
- 21 (4) Continuing competence/education. – A requirement, as a condition of license
22 renewal, to provide evidence of participation in, or completion of, educational
23 and professional activities relevant to practice or area of work.
- 24 (5) Counseling Compact Commission or Commission. – The national
25 administrative body whose membership consists of all states that have enacted
26 the Compact.
- 27 (6) Current significant investigative information. – Any of the following:
- 28 a. Investigative information that a licensing board, after a preliminary
29 inquiry that includes notification and an opportunity for the licensed
30 professional counselor to respond, if required by state law, has reason
31 to believe is not groundless and, if proved true, would indicate more
32 than a minor infraction.
- 33 b. Investigative information that indicates that the licensed professional
34 counselor represents an immediate threat to public health and safety
35 regardless of whether the licensed professional counselor has been
36 notified and had an opportunity to respond.
- 37 (7) Data system. – A repository of information about licensees, including, but not
38 limited to, continuing education, examination, licensure, investigative,
39 privilege to practice, and adverse action information.
- 40 (8) Encumbered license. – A license in which an adverse action restricts the
41 practice of professional counseling by the licensee and said adverse action has
42 been reported to the National Practitioners Data Bank (NPDB).
- 43 (9) Encumbrance. – A revocation or suspension of, or any limitation on, the full
44 and unrestricted practice of licensed professional counseling by a licensing
45 board.
- 46 (10) Executive Committee. – A group of directors elected or appointed to act on
47 behalf of, and within the powers granted to them by, the Commission.
- 48 (11) Home state. – The member state that is the licensee's primary state of
49 residence.
- 50 (12) Impaired practitioner. – An individual who has a condition that may impair
51 his or her ability to practice as a licensed professional counselor without some

- 1 type of intervention and may include, but is not limited to, alcohol and drug
2 dependence, mental health impairment, and neurological or physical
3 impairments.
- 4 (13) Investigative information. – Information, records, or documents received or
5 generated by a professional counseling licensing board pursuant to an
6 investigation.
- 7 (14) Jurisprudence requirement. – The assessment of an individual's knowledge of
8 the laws and rules governing the practice of professional counseling in a state,
9 if required by a member state.
- 10 (15) Licensed professional counselor. – A counselor licensed by a member state,
11 regardless of the title used by that state, to independently assess, diagnose, and
12 treat behavioral health conditions.
- 13 (16) Licensee. – An individual who currently holds an authorization from the state
14 to practice as a licensed professional counselor.
- 15 (17) Licensing board. – The agency of a state, or equivalent, that is responsible for
16 the licensing and regulation of licensed professional counselors.
- 17 (18) Member state. – A state that has enacted the Compact.
- 18 (19) Privilege to practice. – A legal authorization, which is equivalent to a license,
19 permitting the practice of professional counseling in a remote state.
- 20 (20) Professional counseling. – The assessment, diagnosis, and treatment of
21 behavioral health conditions by a licensed professional counselor.
- 22 (21) Remote state. – A member state other than the home state where a licensee is
23 exercising or seeking to exercise the privilege to practice.
- 24 (22) Rule. – A regulation promulgated by the Commission that has the force of
25 law.
- 26 (23) Single-state license. – A licensed professional counselor license issued by a
27 member state that authorizes practice only within the issuing state and does
28 not include a privilege to practice in any other member state.
- 29 (24) State. – Any state, commonwealth, district, or territory of the United States of
30 America that regulates the practice of professional counseling.
- 31 (25) Telehealth. – The application of telecommunication technology to deliver
32 professional counseling services remotely to assess, diagnose, and treat
33 behavioral health conditions.
- 34 (26) Unencumbered license. – A license that authorizes a licensed professional
35 counselor to engage in the full and unrestricted practice of professional
36 counseling.

37 **"§ 90-349.3. State participation in the Compact.**

- 38 (a) To participate in the Compact, a member state must currently do all of the following:
- 39 (1) License and regulate licensed professional counselors.
- 40 (2) Require licensees to pass a nationally recognized exam approved by the
41 Commission.
- 42 (3) Require licensees to have a 60-semester-hour or 90-quarter-hour master's
43 degree in counseling or 60-semester hours or 90-quarter hours of graduate
44 course work, including the following topic areas:
- 45 a. Professional counseling orientation and ethical practice.
- 46 b. Social and cultural diversity.
- 47 c. Human growth and development.
- 48 d. Career development.
- 49 e. Counseling and helping relationships.
- 50 f. Group counseling and group work.
- 51 g. Diagnosis and treatment; assessment and testing.

- 1 h. Research and program evaluation.
2 i. Other areas as determined by the Commission.
3 (4) Require licensees to complete a supervised postgraduate professional
4 experience as defined by the Commission.
5 (5) Have a mechanism in place for receiving and investigating complaints about
6 licensees.
7 (b) A member state shall do all of the following:
8 (1) Participate fully in the Commission's data system, including, but not limited
9 to, using the Commission's unique identifier as defined in rules.
10 (2) Notify the Commission, in compliance with the terms of the Compact and
11 rules, of any adverse action or the availability of investigative information
12 regarding a licensee.
13 (3) Implement or utilize procedures for considering the criminal history records
14 of applicants for an initial privilege to practice. These procedures shall include
15 the submission of fingerprints or other biometric-based information by
16 applicants for the purpose of obtaining an applicant's criminal history record
17 information from the Federal Bureau of Investigation and the agency
18 responsible for retaining that state's criminal records. The procedures must
19 comply with the following:
20 a. The member state must fully implement a criminal background check
21 requirement, within a time frame established by rule, by receiving the
22 results of the Federal Bureau of Investigation record search and shall
23 use the results in making licensure decisions.
24 b. Communication between a member state, the Commission, and among
25 member states regarding the verification of eligibility for licensure
26 through the Compact shall not include any information received from
27 the Federal Bureau of Investigation relating to a federal criminal
28 records check performed by a member state under P.L. 92-544.
29 (4) Comply with the rules of the Commission.
30 (5) Require an applicant to obtain or retain a license in the home state and meet
31 the home state's qualifications for licensure or renewal of licensure, as well as
32 all other applicable state laws.
33 (6) Grant the privilege to practice to a licensee holding a valid unencumbered
34 license in another member state in accordance with the terms of the Compact
35 and rules.
36 (7) Provide for the attendance of the state's commissioner to the Counseling
37 Compact Commission meetings.
38 (c) Member states may charge a fee for granting a privilege to practice.
39 (d) Individuals not residing in a member state shall continue to be able to apply for a
40 member state's single-state license as provided under the laws of each member state. However,
41 the single-state license granted to these individuals shall not be recognized as granting the
42 privilege to practice professional counseling in any other member state.
43 (e) Nothing in this Compact shall affect the requirements established by a member state
44 for the issuance of a single-state license.
45 (f) A license issued to a licensed professional counselor by a home state to a resident in
46 that state shall be recognized by each member state as authorizing a licensed professional
47 counselor to practice professional counseling, under a privilege to practice, in each member state.
48 **"§ 90-349.4. Privilege to practice.**
49 (a) To exercise the privilege to practice under the terms and provisions of the Compact,
50 the licensee shall meet all of the following requirements:
51 (1) Hold a license in the home state.

- 1 (2) Have a valid United States social security number or National Practitioner
2 Identifier.
- 3 (3) Be eligible for a privilege to practice in any member state in accordance with
4 subsections (d), (g), and (h) of this section.
- 5 (4) Have not had any encumbrance or restriction against any license or privilege
6 to practice within the previous two years.
- 7 (5) Notify the Commission that the licensee is seeking the privilege to practice
8 within a remote state.
- 9 (6) Pay any applicable fee, including any state fee, for the privilege to practice.
- 10 (7) Meet any continuing competence/education requirements established by the
11 home state.
- 12 (8) Meet any jurisprudence requirements established by the remote state in which
13 the licensee is seeking a privilege to practice.
- 14 (9) Report to the Commission any adverse action, encumbrance, or restriction on
15 a license taken by any nonmember state within 30 days from the date the
16 action is taken.

17 (b) The privilege to practice is valid until the expiration date of the home state license.
18 The licensee must comply with the requirements of subsection (a) of this section to maintain the
19 privilege to practice in the remote state.

20 (c) A licensee providing professional counseling in a remote state under the privilege to
21 practice shall adhere to the laws and regulations of the remote state.

22 (d) A licensee providing professional counseling services in a remote state is subject to
23 that state's regulatory authority. A remote state may, in accordance with due process and that
24 state's laws, remove a licensee's privilege to practice in the remote state for a specific period of
25 time, impose fines, and take any other necessary actions to protect the health and safety of its
26 citizens. The licensee may be ineligible for a privilege to practice in any member state until the
27 specific time for removal has passed and all fines are paid.

28 (e) If a home state license is encumbered, the licensee shall lose the privilege to practice
29 in any remote state until all of the following occur:

30 (1) The home state license is no longer encumbered.

31 (2) The licensee has not had any encumbrance or restriction against any license
32 or privilege to practice within the previous two years.

33 (f) Once an encumbered license in the home state is restored to good standing, the
34 licensee must meet the requirements of subsection (a) of this section to obtain a privilege to
35 practice in any remote state.

36 (g) If a licensee's privilege to practice in any remote state is removed, the individual may
37 lose the privilege to practice in all other remote states until all of the following occur:

38 (1) The specific period of time for which the privilege to practice was removed
39 has ended.

40 (2) All fines have been paid.

41 (3) The licensee has not had any encumbrance or restriction against any license
42 or privilege to practice within the previous two years.

43 (h) Once the requirements of subsection (g) of this section have been met, the licensee
44 must meet the requirements in subsection (a) of this section to obtain a privilege to practice in a
45 remote state.

46 **"§ 90-349.5. Obtaining a new home state license based on a privilege to practice.**

47 (a) A licensed professional counselor may hold a home state license, which allows for a
48 privilege to practice in other member states, in only one member state at a time.

49 (b) If a licensed professional counselor changes primary state of residence by moving
50 between two member states, the licensed professional counselor shall do all of the following:

- 1 (1) File an application for obtaining a new home state license by virtue of a
2 privilege to practice.
3 (2) Pay all applicable fees.
4 (3) Notify the current and new home state in accordance with applicable rules
5 adopted by the Commission.

6 (c) Upon receipt of an application for obtaining a new home state license by virtue of
7 privilege to practice, the new home state shall verify that the licensed professional counselor
8 meets the pertinent criteria outlined in G.S. 90-349.4 via the data system, without need for
9 primary source verification, except for the following:

- 10 (1) A Federal Bureau of Investigation fingerprint-based criminal background
11 check, if not previously performed or updated, pursuant to applicable rules
12 adopted by the Commission in accordance with P.L. 92-544.
13 (2) Other criminal background checks, as required by the new home state.
14 (3) Completion of any requisite jurisprudence requirements of the new home
15 state.

16 (d) The former home state shall convert the former home state license into a privilege to
17 practice once the new home state has activated the new home state license in accordance with
18 applicable rules adopted by the Commission.

19 (e) Notwithstanding any other provision of this Compact, if the licensed professional
20 counselor cannot meet the criteria in G.S. 90-349.4, the new home state may apply its
21 requirements for issuing a new single-state license.

22 (f) The licensed professional counselor shall pay all applicable fees to the new home state
23 in order to be issued a new home state license.

24 (g) If a licensed professional counselor changes primary state of residence by moving
25 from a member state to a nonmember state, or from a nonmember state to a member state, the
26 state criteria shall apply for issuance of a single-state license in the new state.

27 (h) Nothing in this Compact shall interfere with a licensee's ability to hold a single-state
28 license in multiple states; however, for the purposes of this Compact, a licensee shall have only
29 one home state license.

30 (i) Nothing in this Compact shall affect the requirements established by a member state
31 for the issuance of a single-state license.

32 **"§ 90-349.6. Active duty military personnel or their spouses.**

33 Active duty military personnel, or their spouses, shall designate a home state where the
34 individual has a current license in good standing. The individual may retain the home state
35 designation during the period the service member is on active duty. Subsequent to designating a
36 home state, the individual shall only change his or her home state through application for
37 licensure in the new state or through the process described in G.S. 90-349.5.

38 **"§ 90-349.7. Compact privilege to practice telehealth.**

39 (a) Member states shall recognize the right of a licensed professional counselor, licensed
40 by a home state in accordance with G.S. 90-349.3 and under the rules promulgated by the
41 Commission, to practice professional counseling in any member state via telehealth under a
42 privilege to practice as provided in the Compact and rules promulgated by the Commission.

43 (b) A licensee providing professional counseling services in a remote state under the
44 privilege to practice shall adhere to the laws and regulations of the remote state.

45 **"§ 90-349.8. Adverse actions.**

46 (a) In addition to the other powers conferred by state law, a remote state shall have the
47 authority, in accordance with existing state due process law, to do the following:

- 48 (1) Take adverse action against a licensed professional counselor's privilege to
49 practice within that member state.
50 (2) Issue subpoenas for both hearings and investigations that require the
51 attendance and testimony of witnesses as well as the production of evidence.

1 Subpoenas issued by a licensing board in a member state for the attendance
2 and testimony of witnesses or the production of evidence from another
3 member state shall be enforced in the latter state by any court of competent
4 jurisdiction, according to the practice and procedure of that court applicable
5 to subpoenas issued in proceedings pending before it. The issuing authority
6 shall pay any witness fees, travel expenses, mileage, and other fees required
7 by the service statutes of the state in which the witnesses or evidence are
8 located.

9 (3) A home state shall have exclusive power to impose adverse action against a
10 licensed professional counselor's license issued by the home state.

11 (b) For purposes of taking adverse action, the home state shall give the same priority and
12 effect to reported conduct received from a member state as it would if the conduct had occurred
13 within the home state. In doing so, the home state shall apply its own state laws to determine
14 appropriate action.

15 (c) The home state shall complete any pending investigations of a licensed professional
16 counselor who changes primary state of residence during the course of the investigations. The
17 home state shall also have the authority to take appropriate action and shall promptly report the
18 conclusions of the investigations to the data system. The data system administrator shall promptly
19 notify the new home state of any adverse actions.

20 (d) A member state, if otherwise permitted by state law, may recover from the affected
21 licensed professional counselor the costs of investigations and disposition of cases resulting from
22 any adverse action taken against that licensed professional counselor.

23 (e) A member state may take adverse action based on the factual findings of the remote
24 state, provided that the member state follows its own procedures for taking the adverse action.

25 (f) In addition to the authority granted to a member state by its respective state
26 professional counseling act or other applicable state law, any member state may participate with
27 other member states in joint investigations of licensees. Member states shall share any
28 investigative, litigation, or compliance materials in furtherance of any joint or individual
29 investigation initiated under the Compact.

30 (g) If an adverse action is taken by the home state against the license of a licensed
31 professional counselor, the licensed professional counselor's privilege to practice in all other
32 member states shall be deactivated until all encumbrances have been removed from the state
33 license. All home state disciplinary orders that impose adverse action against the license of a
34 licensed professional counselor shall include a statement that the licensed professional
35 counselor's privilege to practice is deactivated in all member states during the pendency of the
36 order.

37 (h) If a member state takes adverse action, it shall promptly notify the administrator of
38 the data system. The administrator of the data system shall promptly notify the home state of any
39 adverse actions by remote states.

40 (i) Nothing in this Compact shall override a member state's decision that participation in
41 an alternative program may be used in lieu of adverse action.

42 **"§ 90-349.9. Establishment of the Counseling Compact Commission.**

43 (a) Establishment. – The Compact member states hereby create and establish a joint
44 public agency known as the Counseling Compact Commission.

45 (1) The Commission is an instrumentality of the Compact states.

46 (2) Venue is proper, and judicial proceedings by or against the Commission shall
47 be brought solely and exclusively in a court of competent jurisdiction where
48 the principal office of the Commission is located. The Commission may waive
49 venue and jurisdictional defenses to the extent it adopts or consents to
50 participate in alternative dispute resolution proceedings.

1 (3) Nothing in this Compact shall be construed to be a waiver of sovereign
2 immunity.

3 (b) Membership; Voting; Meetings. – Each member state shall have and be limited to one
4 delegate selected by that member state's licensing board. The delegate shall be either (i) a current
5 member of the licensing board, who is a licensed professional counselor or public member, or
6 (ii) an administrator of the licensing board. Any delegate may be removed or suspended from
7 office as provided by the law of the state from which the delegate is appointed. The member state
8 board shall fill any vacancy occurring in the Commission within 60 days. Each delegate shall be
9 entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall
10 otherwise have an opportunity to participate in the business and affairs of the Commission. A
11 delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may
12 provide for delegates' participation in meetings by telephone or other means of communication.
13 The Commission shall meet at least once during each calendar year. Additional meetings shall
14 be held as set forth in the bylaws. The Commission shall establish by rule a term of office for
15 delegates and may by rule establish term limits.

16 (c) Powers; Duties. – The Commission shall have the following powers and duties:

17 (1) Establish the fiscal year of the Commission.

18 (2) Establish bylaws.

19 (3) Maintain its financial records in accordance with the bylaws.

20 (4) Meet and take such actions as are consistent with the provisions of this
21 Compact and the bylaws.

22 (5) Promulgate rules which shall be binding to the extent and in the manner
23 provided for in the Compact.

24 (6) Bring and prosecute legal proceedings or actions in the name of the
25 Commission, provided that the standing of any state professional counseling
26 licensing board to sue or be sued under applicable law shall not be affected.

27 (7) Purchase and maintain insurance and bonds.

28 (8) Borrow, accept, or contract for services of personnel, including, but not
29 limited to, employees of a member state.

30 (9) Hire employees, elect or appoint officers, fix compensation, define duties,
31 grant such individuals appropriate authority to carry out the purposes of the
32 Compact, and establish the Commission's personnel policies and programs
33 relating to conflicts of interest, qualifications of personnel, and other related
34 personnel matters.

35 (10) Accept any and all appropriate donations and grants of money, equipment,
36 supplies, materials and services, and receive, utilize, and dispose of the same,
37 provided that at all times the Commission shall avoid any appearance of
38 impropriety and conflict of interest.

39 (11) Lease, purchase, accept appropriate gifts or donations of, or otherwise own,
40 hold, improve, or use, any property, real, personal, or mixed, provided that at
41 all times the Commission shall avoid any appearance of impropriety.

42 (12) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise
43 dispose of any property, real, personal, or mixed.

44 (13) Establish a budget and make expenditures.

45 (14) Borrow money.

46 (15) Appoint committees, including standing committees composed of members,
47 state regulators, state legislators or their representatives, and consumer
48 representatives, and such other interested persons as may be designated in this
49 Compact and the bylaws.

50 (16) Provide and receive information from, and cooperate with, law enforcement
51 agencies.

- 1 (17) Establish and elect an Executive Committee.
2 (18) Perform such other functions as may be necessary or appropriate to achieve
3 the purposes of this Compact consistent with the state regulation of
4 professional counseling licensure and practice.
5 (d) Executive Committee. – The Executive Committee shall have the power to act on
6 behalf of the Commission according to the terms of this Compact.
7 (1) The Executive Committee shall be composed of up to 11 members, as follows:
8 a. Seven voting members who are elected by the Commission from the
9 current membership of the Commission.
10 b. Up to four ex officio, nonvoting members from four recognized
11 national professional counselor organizations.
12 c. The ex officio members will be selected by their respective
13 organizations.
14 (2) The Commission may remove any member of the Executive Committee as
15 provided in bylaws.
16 (3) The Executive Committee shall meet at least annually.
17 (4) The Executive Committee shall have the following duties and responsibilities:
18 a. Recommend to the entire Commission changes to the rules or bylaws,
19 changes to this Compact legislation, fees paid by Compact member
20 states such as annual dues, and any Commission Compact fee charged
21 to licensees for the privilege to practice.
22 b. Ensure Compact administration services are appropriately provided,
23 contractual or otherwise.
24 c. Prepare and recommend the budget.
25 d. Maintain financial records on behalf of the Commission.
26 e. Monitor Compact compliance of member states and provide
27 compliance reports to the Commission.
28 f. Establish additional committees as necessary.
29 g. Perform other duties as provided in rules or bylaws.
30 (e) Meetings of the Commission. – All meetings shall be open to the public, and public
31 notice of meetings shall be given in the same manner as required under the rulemaking provisions
32 in G.S. 90-349.11. The Commission or the Executive Committee or other committees of the
33 Commission may convene in a closed, nonpublic meeting if the Commission or Executive
34 Committee or other committees of the Commission must discuss any of the following:
35 (1) Noncompliance of a member state with its obligations under the Compact.
36 (2) The employment, compensation, discipline or other matters, practices or
37 procedures related to specific employees, or other matters related to the
38 Commission's internal personnel practices and procedures.
39 (3) Current, threatened, or reasonably anticipated litigation.
40 (4) Negotiation of contracts for the purchase, lease, or sale of goods, services, or
41 real estate.
42 (5) Accusation of any person of a crime or formally censuring any person.
43 (6) Disclosure of trade secrets or commercial or financial information that is
44 privileged or confidential.
45 (7) Disclosure of information of a personal nature where disclosure would
46 constitute a clearly unwarranted invasion of personal privacy.
47 (8) Disclosure of investigative records compiled for law enforcement purposes.
48 (9) Disclosure of information related to any investigative reports prepared by or
49 on behalf of or for use of the Commission or other committee charged with
50 responsibility of investigation or determination of compliance issues pursuant
51 to the Compact.

1 (10) Matters specifically exempted from disclosure by federal or member state
2 statute.

3 If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's
4 legal counsel or designee shall certify that the meeting may be closed and shall reference each
5 relevant exempting provision. The Commission shall keep minutes that fully and clearly describe
6 all matters discussed in a meeting and shall provide a full and accurate summary of actions taken,
7 and the reasons therefor, including a description of the views expressed. All documents
8 considered in connection with an action shall be identified in such minutes. All minutes and
9 documents of a closed meeting shall remain under seal, subject to release by a majority vote of
10 the Commission or order of a court of competent jurisdiction.

11 (f) Financing of the Commission. – The Commission shall pay, or provide for the
12 payment of, the reasonable expenses of its establishment, organization, and ongoing activities.
13 The Commission may accept any and all appropriate revenue sources, donations, and grants of
14 money, equipment, supplies, materials, and services.

15 The Commission may levy on and collect an annual assessment from each member state or
16 impose fees on other parties to cover the cost of the operations and activities of the Commission
17 and its staff, which must be in a total amount sufficient to cover its annual budget as approved
18 by the Commission each year for which revenue is not provided by other sources. The aggregate
19 annual assessment amount shall be allocated based upon a formula to be determined by the
20 Commission, which shall promulgate a rule binding upon all member states. The Commission
21 shall not incur obligations of any kind prior to securing the funds adequate to meet the same, nor
22 shall the Commission pledge the credit of any of the member states, except by and with the
23 authority of the member state.

24 The Commission shall keep accurate accounts of all receipts and disbursements. The receipts
25 and disbursements of the Commission shall be subject to the audit and accounting procedures
26 established under its bylaws. However, all receipts and disbursements of funds handled by the
27 Commission shall be audited yearly by a certified or licensed public accountant, and the report
28 of the audit shall be included in and become part of the annual report of the Commission.

29 (g) Qualified Immunity; Defense; Indemnification. – The members, officers, executive
30 director, employees, and representatives of the Commission shall be immune from suit and
31 liability, either personally or in their official capacity, for any claim for damage to or loss of
32 property or personal injury or other civil liability caused by or arising out of any actual or alleged
33 act, error, or omission that occurred, or that the person against whom the claim is made had a
34 reasonable basis for believing occurred, within the scope of Commission employment, duties, or
35 responsibilities, provided that nothing in this paragraph shall be construed to protect any such
36 person from suit or liability for any damage, loss, injury, or liability caused by the intentional or
37 willful or wanton misconduct of that person.

38 The Commission shall defend any member, officer, executive director, employee, or
39 representative of the Commission in any civil action seeking to impose liability arising out of
40 any actual or alleged act, error, or omission that occurred within the scope of Commission
41 employment, duties, or responsibilities, or that the person against whom the claim is made had a
42 reasonable basis for believing occurred within the scope of Commission employment, duties, or
43 responsibilities, provided that nothing herein shall be construed to prohibit that person from
44 retaining his or her own counsel, and provided further, that the actual or alleged act, error, or
45 omission did not result from that person's intentional or willful or wanton misconduct.

46 The Commission shall indemnify and hold harmless any member, officer, executive director,
47 employee, or representative of the Commission for the amount of any settlement or judgment
48 obtained against that person arising out of any actual or alleged act, error, or omission that
49 occurred within the scope of Commission employment, duties, or responsibilities, or that such
50 person had a reasonable basis for believing occurred within the scope of Commission

1 employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission
2 did not result from the intentional or willful or wanton misconduct of that person.

3 **"§ 90-349.10. Data system.**

4 (a) The Commission shall provide for the development, maintenance, and utilization of
5 a coordinated database and reporting system containing licensure, adverse action, and
6 investigative information on all licensed individuals in member states.

7 (b) Notwithstanding any other provision of law to the contrary, a member state shall
8 submit a uniform data set to the data system on all individuals to whom this Compact is
9 applicable, as required by the rules of the Commission, including:

10 (1) Identifying information.

11 (2) Licensure data.

12 (3) Adverse actions against a license or privilege to practice.

13 (4) Nonconfidential information related to alternative program participation.

14 (5) Any denial of application for licensure and the reasons for such denial.

15 (6) Current significant investigative information.

16 (7) Other information that may facilitate the administration of this Compact, as
17 determined by the rules of the Commission.

18 (c) Investigative information pertaining to a licensee in any member state will only be
19 available to other member states.

20 (d) The Commission shall promptly notify all member states of any adverse action taken
21 against a licensee or an individual applying for a license. Adverse action information pertaining
22 to a licensee in any member state will be available to any other member state.

23 (e) Member states contributing information to the data system may designate information
24 that may not be shared with the public without the express permission of the contributing state.

25 (f) Any information submitted to the data system that is subsequently required to be
26 expunged by the laws of the member state contributing the information shall be removed from
27 the data system.

28 **"§ 90-349.11. Rulemaking.**

29 (a) The Commission shall promulgate reasonable rules in order to effectively and
30 efficiently achieve the purposes of the Compact. Notwithstanding the foregoing, in the event the
31 Commission exercises its rulemaking authority in a manner that is beyond the scope of the
32 purposes of the Compact, or the powers granted thereunder, then such an action by the
33 Commission shall be invalid and have no force and effect.

34 (b) The Commission shall exercise its rulemaking powers pursuant to the criteria set forth
35 in this section and the rules adopted thereunder. Rules and amendments shall become binding as
36 of the date specified in each rule or amendment.

37 (c) If a majority of the legislatures of the member states rejects a rule, by enactment of a
38 statute or resolution in the same manner used to adopt the Compact within four years of the date
39 of adoption of the rule, then such rule shall have no further force and effect in any member state.

40 (d) Rules or amendments to the rules shall be adopted at a regular or special meeting of
41 the Commission.

42 (e) Prior to promulgation and adoption of a final rule by the Commission, and at least 30
43 days in advance of the meeting at which the rule will be considered and voted upon, the
44 Commission shall file a notice of proposed rulemaking on the website of the Commission or
45 other publicly accessible platform and on the website of each member state professional
46 counseling licensing board or other publicly accessible platform or the publication in which each
47 state would otherwise publish proposed rules.

48 (f) The notice of proposed rulemaking shall include all of the following:

49 (1) The proposed time, date, and location of the meeting in which the rule will be
50 considered and voted upon.

- 1 (2) The text of the proposed rule or amendment and the reason for the proposed
2 rule.
- 3 (3) A request for comments on the proposed rule from any interested person.
- 4 (4) The manner in which interested persons may submit notice to the Commission
5 of their intention to attend the public hearing and any written comments.
- 6 (g) Prior to adoption of a proposed rule, the Commission shall allow persons to submit
7 written data, facts, opinions, and arguments, which shall be made available to the public.
- 8 (h) The Commission shall grant an opportunity for a public hearing before it adopts a rule
9 or amendment if a hearing is requested by any of the following:
- 10 (1) At least 25 persons.
- 11 (2) A state or federal government subdivision or agency.
- 12 (3) An association or organization having at least 25 members.
- 13 (i) If a hearing is held on the proposed rule or amendment, the Commission shall publish
14 the place, time, and date of the scheduled public hearing. If the hearing is held via electronic
15 means, the Commission shall publish the mechanism for access to the electronic hearing.
16 Hearings shall be conducted as follows:
- 17 (1) All persons wishing to be heard at the hearing shall notify the executive
18 director of the Commission or other designated member in writing of their
19 desire to appear and testify at the hearing not less than five business days
20 before the scheduled date of the hearing.
- 21 (2) Hearings shall be conducted in a manner providing each person who wishes
22 to comment a fair and reasonable opportunity to comment orally or in writing.
- 23 (3) All hearings will be recorded. A copy of the recording shall be made available
24 on request.
- 25 (4) Nothing in this section shall be construed as requiring a separate hearing on
26 each rule. Rules may be grouped for the convenience of the Commission at
27 hearings required by this section.
- 28 (j) Following the scheduled hearing date, or by the close of business on the scheduled
29 hearing date if the hearing was not held, the Commission shall consider all written and oral
30 comments received.
- 31 (k) If no written notice of intent to attend the public hearing by interested parties is
32 received, the Commission may proceed with promulgation of the proposed rule without a public
33 hearing.
- 34 (l) The Commission shall, by majority vote of all members, take final action on the
35 proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking
36 record and the full text of the rule.
- 37 (m) Upon determination that an emergency exists, the Commission may consider and
38 adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that
39 the usual rulemaking procedures provided in the Compact and in this section shall be
40 retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days
41 after the effective date of the rule. For the purposes of this provision, an emergency rule is one
42 that must be adopted immediately in order to (i) meet an imminent threat to public health, safety,
43 or welfare, (ii) prevent a loss of Commission or member state funds, (iii) meet a deadline for the
44 promulgation of an administrative rule that is established by federal law or rule, or (iv) protect
45 public health and safety.
- 46 (n) The Commission or an authorized committee of the Commission may direct revisions
47 to a previously adopted rule or amendment for purposes of correcting typographical errors, errors
48 in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be
49 posted on the website of the Commission. The revision shall be subject to challenge by any
50 person for a period of 30 days after posting. The revision may be challenged only on grounds
51 that the revision results in a material change to a rule. A challenge shall be made in writing and

1 delivered to the chair of the Commission prior to the end of the notice period. If no challenge is
2 made, the revision will take effect without further action. If the revision is challenged, the
3 revision may not take effect without the approval of the Commission.

4 **"§ 90-349.12. Oversight; dispute resolution; enforcement.**

5 (a) Oversight. – The executive, legislative, and judicial branches of state government in
6 each member state shall enforce this Compact and take all actions necessary and appropriate to
7 effectuate the Compact's purposes and intent. The provisions of this Compact and the rules
8 promulgated hereunder shall have standing as statutory law.

9 All courts shall take judicial notice of the Compact and the rules in any judicial or
10 administrative proceeding in a member state pertaining to the subject matter of this Compact
11 which may affect the powers, responsibilities, or actions of the Commission.

12 The Commission shall be entitled to receive service of process in any such proceeding and
13 shall have standing to intervene in such a proceeding for all purposes. Failure to provide service
14 of process to the Commission shall render a judgment or order void as to the Commission, this
15 Compact, or promulgated rules.

16 (b) Default; Technical Assistance; Termination. – If the Commission determines that a
17 member state has defaulted in the performance of its obligations or responsibilities under this
18 Compact or the promulgated rules, the Commission shall do all of the following:

19 (1) Provide written notice to the defaulting state and other member states of the
20 nature of the default, the proposed means of curing the default, and any other
21 action to be taken by the Commission.

22 (2) Provide remedial training and specific technical assistance regarding the
23 default.

24 If a state in default fails to cure the default, the defaulting state may be terminated from the
25 Compact upon an affirmative vote of a majority of the member states, and all rights, privileges,
26 and benefits conferred by this Compact may be terminated on the effective date of termination.
27 A cure of the default does not relieve the offending state of obligations or liabilities incurred
28 during the period of default.

29 Termination of membership in the Compact shall be imposed only after all other means of
30 securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given
31 by the Commission to the governor, the majority and minority leaders of the defaulting state's
32 legislature, and each of the member states.

33 A state that has been terminated is responsible for all assessments, obligations, and liabilities
34 incurred through the effective date of termination, including obligations that extend beyond the
35 effective date of termination.

36 The Commission shall not bear any costs related to a state that is found to be in default or
37 that has been terminated from the Compact, unless agreed upon in writing between the
38 Commission and the defaulting state.

39 The defaulting state may appeal the action of the Commission by petitioning the U.S. District
40 Court for the District of Columbia or the federal district where the Commission has its principal
41 offices. The prevailing member shall be awarded all costs of such litigation, including reasonable
42 attorneys' fees.

43 (c) Dispute Resolution. – Upon request by a member state, the Commission shall attempt
44 to resolve disputes related to the Compact that arise among member states and between member
45 and nonmember states. The Commission shall promulgate a rule providing for both mediation
46 and binding dispute resolution for disputes as appropriate.

47 (d) Enforcement. – The Commission, in the reasonable exercise of its discretion, shall
48 enforce the provisions and rules of this Compact. By majority vote, the Commission may initiate
49 legal action in the U.S. District Court for the District of Columbia or the federal district where
50 the Commission has its principal offices against a member state in default to enforce compliance
51 with the provisions of the Compact and its promulgated rules and bylaws. The relief sought may

1 include both injunctive relief and damages. In the event judicial enforcement is necessary, the
2 prevailing member shall be awarded all costs of such litigation, including reasonable attorneys'
3 fees. The remedies herein shall not be the exclusive remedies of the Commission. The
4 Commission may pursue any other remedies available under federal or state law.

5 **"§ 90-349.13. Date of implementation of Counseling Compact Commission and associated**
6 **rules; withdrawal; amendment.**

7 (a) The Compact shall come into effect on the date on which the Compact statute is
8 enacted into law in the tenth member state. The provisions, which become effective at that time,
9 shall be limited to the powers granted to the Commission relating to assembly and the
10 promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers
11 necessary to the implementation and administration of the Compact.

12 (b) Any state that joins the Compact subsequent to the Commission's initial adoption of
13 the rules shall be subject to the rules as they exist on the date on which the Compact becomes
14 law in that state. Any rule that has been previously adopted by the Commission shall have the
15 full force and effect of law on the day the Compact becomes law in that state.

16 (c) Any member state may withdraw from this Compact by enacting a statute repealing
17 the same. A member state's withdrawal shall not take effect until six months after enactment of
18 the repealing statute. Withdrawal shall not affect the continuing requirement of the withdrawing
19 state's professional counseling licensing board to comply with the investigative and adverse
20 action reporting requirements of this act prior to the effective date of withdrawal.

21 (d) Nothing contained in this Compact shall be construed to invalidate or prevent any
22 professional counseling licensure agreement or other cooperative arrangement between a
23 member state and a nonmember state that does not conflict with the provisions of this Compact.

24 (e) This Compact may be amended by the member states. No amendment to this Compact
25 shall become effective and binding upon any member state until it is enacted into the laws of all
26 member states.

27 **"§ 90-349.14. Construction and severability.**

28 This Compact shall be liberally construed so as to effectuate the purposes thereof. The
29 provisions of this Compact shall be severable, and if any phrase, clause, sentence, or provision
30 of this Compact is declared to be contrary to the constitution of any member state or of the United
31 States or the applicability thereof to any government, agency, person, or circumstance is held
32 invalid, the validity of the remainder of this Compact and the applicability thereof to any
33 government, agency, person, or circumstance shall not be affected thereby. If this Compact shall
34 be held contrary to the constitution of any member state, the Compact shall remain in full force
35 and effect as to the remaining member states and in full force and effect as to the member state
36 affected as to all severable matters.

37 **"§ 90-349.15. Binding effect of Compact and other laws.**

38 (a) A licensee providing professional counseling services in a remote state under the
39 privilege to practice shall adhere to the laws and regulations, including scope of practice, of the
40 remote state.

41 (b) Nothing herein prevents the enforcement of any other law of a member state that is
42 not inconsistent with the Compact.

43 (c) Any laws in a member state in conflict with the Compact are superseded to the extent
44 of the conflict.

45 (d) Any lawful actions of the Commission, including all rules and bylaws properly
46 promulgated by the Commission, are binding upon the member states.

47 (e) All permissible agreements between the Commission and the member states are
48 binding in accordance with their terms.

49 (f) In the event any provision of the Compact exceeds the constitutional limits imposed
50 on the legislature of any member state, the provision shall be ineffective to the extent of the
51 conflict with the constitutional provision in question in that member state."

1 **SECTION 2.(a)** Contract Time and Continuity. – In efforts to support the continuity
2 of services provided by nonprofit grantees receiving state and federal funds, the Department of
3 Health and Human Services (Department) shall enter into a minimum of a two-year contract
4 agreement with nonprofit grantees/recipients if all of the following requirements are met:

- 5 (1) The nonprofit grantee/recipient is receiving nonrecurring funding for each
6 year of a fiscal biennium.
- 7 (2) The nonprofit grantee/recipient is receiving recurring funding.
- 8 (3) Multiyear contracts are not otherwise prohibited by the funding source.

9 Nonprofit grantees/recipients receiving recurring federal grant funding shall have the
10 option to extend the contract up to one additional year at the end of the contract's initial term if
11 all of the following requirements are met:

- 12 (1) The extension is mutually agreed upon by the Department and the nonprofit
13 grantee, through a written amendment as provided for in the General Terms
14 and Conditions.
- 15 (2) Funding for the contract remains available.

16 The Department shall allow any nonprofit grantee/recipient receiving recurring or
17 nonrecurring state and/or federal funding for each year of a fiscal biennium to automatically
18 activate limited-time extensions of up to three months for continuity of services when a formal
19 extension or renewal process has not been completed within 10 business days of the subsequent
20 contract start date if all of the following requirements are met:

- 21 (1) The nonprofit grantee/recipient is receiving recurring funding or nonrecurring
22 state and/or federal funding for each year of a fiscal biennium.
- 23 (2) The nonprofit grantee/recipient has received an unqualified audit report on its
24 most recent financial audit when an audit is required by G.S. 159-34 or 09
25 NCAC 03M.
- 26 (3) The nonprofit grantee/recipient has a track record of timely performance and
27 financial reporting to the Department as required by the contract.
- 28 (4) The nonprofit grantee/recipient has not been identified by the Department as
29 having a record of noncompliance with requirements of any funding source
30 used to support the contract and has not received an undisputed notice of such
31 noncompliance from the Department. For purposes of this requirement,
32 noncompliance does not include issues stemming from late execution of a
33 contract or mutually agreed upon changes to scope of work or deliverables,
34 and undisputed notice of noncompliance does not include notice of
35 noncompliance where the grantee has provided written evidence of actual
36 compliance to the Department within 30 days of receipt of notice of
37 noncompliance.
- 38 (5) The nonprofit grantee/recipient has been in operation for at least five years.

39 **SECTION 2.(b)** Directed Grant Contacts. – Within 15 days after the date the
40 Appropriations Act of 2022 (the "Act") becomes law, the Fiscal Research Division shall provide
41 the Department of Health and Human Services, Division of Budget and Analysis, with a list of
42 preliminary information for all non-State entities receiving directed grants through the Act. At a
43 minimum, this list shall include all of the following information:

- 44 (1) The legal name of the non-State entity.
- 45 (2) The mailing address of the non-State entity.
- 46 (3) The name, email address, and phone number for each of the non-State entity's
47 points of contact for communications related to the directed grant contracting
48 and funds disbursement process.

49 **SECTION 2.(c)** Negotiated Overhead Rates. – The negotiation, determination, or
50 settlement of the reimbursable amount of overhead under cost-reimbursement type contracts is
51 accomplished on an individual contract basis and is based upon the federally approved indirect

1 cost rate. For vendors who do not have a federally approved indirect cost rate, in accordance with
2 2 C.F.R. § 200.414(f), the de minimis rate of ten percent (10%) of modified total direct costs
3 shall apply.

4 **SECTION 3.** Section 1 of this act becomes effective when at least 10 states have
5 enacted the Professional Counseling Licensure Compact set forth in Section 1 of this act. The
6 North Carolina Board of Licensed Clinical Mental Health Counselors shall report to the Revisor
7 of Statutes when the Professional Counseling Licensure Compact set forth in Section 1 of this
8 act has been enacted by the 10 member states. Section 2 of this act becomes effective July 15,
9 2022. The remainder of this act is effective when it becomes law.