

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1143 Department of Health  
**SPONSOR(S):** Health Quality Subcommittee, Gregory  
**TIED BILLS:** HB 1269 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	11 Y, 0 N, As CS	Siples	McElroy
2) Health Care Appropriations Subcommittee	10 Y, 0 N	Mielke	Clark
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

CS/HB 1143 makes numerous changes to health care professions regulated by Medical Quality Assurance within the Department of Health (DOH).

The Interstate Medical Licensure Compact (IMLC) is a multi-state agreement that creates an expedited path to licensure by setting qualifications for licensure and outlining a process for physicians to apply and receive licenses in states where they are not currently licensed. The IMLC is not a mutual recognition agreement. A physician must obtain a license from each state in which the physician plans to practice. Twenty-nine states, the District of Columbia, and the Territory of Guam have adopted the IMLC. The bill authorizes Florida to enter into the IMLC.

The bill allows a physician who is licensed through the IMLC and whose license is suspended or revoked through the IMLC as a result of disciplinary action taken against the physician's license in another state, to have a formal hearing before the Florida Division of Administrative Hearings (DOAH).

The IMLC Commission oversees the operations of the IMLC, and is responsible for, among other things, adopting rules, issuing advisory opinions, and enforcing compliance. Each member state designates two individuals to serve as commissioners. The bill requires the Florida-appointed IMLC commissioners to ensure the commission complies with the state's laws on public records and open meetings.

The Florida Center for Nursing (Center) examines the supply and demand of nurses in the state, including issues of recruitment, retention, and utilization of nurse workforce resources. A 16-member board of directors oversees the work of the Center and implements its major functions. The bill revises the requirements for appointment to the Florida Center for Nursing Board of Directors.

DOH has the authority to certify master social workers. However, there is no statutory definition of the scope of practice for a certified master social worker. The bill establishes a scope of practice for the certified master social worker and aligns the application process with the process used for other licensed mental health professionals.

The bill also authorizes the Board of Clinical Social Work, Marriage and Family Therapists, and Mental Health Counseling to approve a one-time exception to the 60-month limit on an internship registration and revises the licensure requirements for Licensed Clinical Social Workers, Marriage and Family Therapists, and Licensed Mental Health Counselors.

The bill has various positive and negative fiscal impacts on the DOH, which can be absorbed with existing resources. Additionally, there may be an indeterminate, negative fiscal impact on the DOAH. The bill has no fiscal impact on local governments.

The bill provides an effective date of July 1, 2020.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Physician Licensure in Florida

The regulation of the practices of medicine and osteopathic medicine falls under chapters 458 and 459, F.S., respectively. The practice acts for both professions establish the regulatory boards, a variety of licenses, the application process with eligibility requirements, and financial responsibilities for the practicing physicians. The boards have the authority to establish, by rule, standards of practice and standards of care for particular settings.<sup>1</sup> Such standards may include education and training, medication including anesthetics, assistance of and delegation to other personnel, sterilization, performance of complex or multiple procedures, records, informed consent, and policy and procedures manuals.<sup>2</sup>

##### *Licensure by Examination*

The general requirements for licensure under both practice acts are very similar with the obvious differences found in the educational backgrounds of the applicants. Where the practice acts share the most similarities are the qualifications for licensure. Both the Board of Medicine and the Board of Osteopathic Medicine require their respective applicants to meet these minimum qualifications:<sup>3</sup>

- Complete an application form as designated by the appropriate regulatory board.
- Be at least 21 years of age.
- Be of good moral character.
- Have completed at least two years (medical) or three years (osteopathic) of pre-professional post-secondary education.
- Have not previously committed any act that would constitute a violation of this chapter or lead to regulatory discipline.
- Have not had an application for a license to practice medicine or osteopathic medicine denied or a license revoked, suspended or otherwise acted upon in another jurisdiction by another licensing authority.
- Must submit a set of fingerprints to DOH for a criminal background check.
- Demonstrate that he or she is a graduate of a medical college recognized and approved by the applicant's respective professional association.
- Demonstrate that she or he has successfully completed a resident internship (osteopathic medicine) or supervised clinical training (medical) of not less than 12 months in a hospital approved for this purpose by the applicant's respective professional association.
- Demonstrate that he or she has obtained a passing score, as established by the applicant's appropriate regulatory board, on all parts of the designated professional examination conducted by the regulatory board's approved medical examiners no more than five years before making application to this state; or, if holding a valid active license in another state, that the initial licensure in the other state occurred no more than five years after the applicant obtained a passing score on the required examination.

The current licensure application fee for a medical doctor is \$350 and is non-refundable.<sup>4</sup> Applications must be completed within one year. If a license is approved, the initial license fee is \$355. The entire process may take from two to six months from the time the application is received.<sup>5</sup>

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<sup>1</sup> Sections 458.331(1)(v) and 459.015(1)(z), F.S.

<sup>2</sup> Id.

<sup>3</sup> Sections 458.311 and 459.0055, F.S.

<sup>4</sup> Florida Board of Medicine, *Medical Doctor - Fees*, available at <https://flboardofmedicine.gov/licensing/medical-doctor-unrestricted/> (Last visited January 31, 2020).

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**DATE:** 2/11/2020

For osteopathic physicians, the current application fee is non-refundable \$200, and if approved, the initial licensure fee is \$305.<sup>6</sup> The same application validity provision of one year applies and the processing time of two to six months is the range of time that applicants should anticipate for a decision.<sup>7</sup>

### *Licensure by Endorsement*

In Florida, to practice medicine an individual must become a licensed medical doctor through licensure by examination<sup>8</sup> or licensure by endorsement.<sup>9</sup> Florida does not recognize another state's medical license or provide licensure reciprocity.<sup>10</sup> To qualify for licensure by endorsement a physician must:<sup>11</sup>

- Meet one of the following education and training requirements:
  - Be a graduate of an allopathic U.S. medical school recognized and approved by the U.S. Office of Education and completed at least one year of residency training;
  - Be a graduate of an allopathic international medical school and have a valid Educational Commission for Foreign Medical Graduates (ECFMG) certificate and completed an approved residency of at least two years in one specialty area; or
  - Be a graduate who has completed the formal requirements of an international medical school except the internship or social service requirements, passed parts I and II of the National Board of Medical Examiners (NBME) or ECFMG equivalent examination, and completed an academic year of supervised clinical training (5<sup>th</sup> pathway) and completed an approved residency of at least two years in one specialty area.
- Have passed all parts of a national examination (the NBME; the Federation Licensing Examination offered by the Federation of State Medical Boards of the United States, Inc.; or the United States Medical Licensing Exam); and
- Have actively practiced medicine in another jurisdiction for at least two of the immediately preceding four years; or passed a board-approved clinical competency examination within the year preceding filing of the application or; successfully completed a board approved postgraduate training program within two years preceding filing of the application.

There is no specific statutory authority for osteopathic medicine licensure by endorsement. However, if an applicant is licensed in another state, the applicant may request that Florida “endorse” those exam scores and demonstrate that the license was issued based on those exam scores. The applicant must also show that the exam was substantially similar to any exam that Florida allows for licensure.<sup>12</sup>

### *Financial Responsibility*

Florida-licensed allopathic and osteopathic physicians are required to maintain professional liability insurance or other financial responsibility to cover potential claims for medical malpractice as a condition of licensure, with specified exemptions.<sup>13</sup> Physicians who perform surgeries in a certain setting or have hospital privileges must maintain professional liability insurance or other financial responsibility to cover an amount not less than \$250,000 per claim.<sup>14</sup> Physicians without hospital

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<sup>5</sup> Florida Board of Medicine, *Medical Doctor Unrestricted – Process*, available at <https://flboardofmedicine.gov/licensing/medical-doctor-unrestricted/> (last visited January 31, 2020).

<sup>6</sup> Florida Board of Osteopathic Medicine, *Osteopathic Medicine Full Licensure - Fees*, available at <https://flboardofmedicine.gov/licensing/medical-doctor-unrestricted/> (last visited January 31, 2020).

<sup>7</sup> Florida Board of Osteopathic Medicine, *Osteopathic Medicine Full Licensure - Process*, available at <https://flboardofmedicine.gov/licensing/osteopathic-medicine-full-licensure/> (last visited January 31, 2020).

<sup>8</sup> Section 458.311, F.S.

<sup>9</sup> Section 458.313, F.S.

<sup>10</sup> Notwithstanding this lack of reciprocity, physicians and other health care practitioners licensed out-of-state who meet certain requirements may register with DOH under s. 456.47(4), F.S., and provide services to patients within Florida via telehealth.

<sup>11</sup> Section 458.313 F.S. See also Florida Board of Medicine, *Medical Doctor-Unrestricted; Licensure by Endorsement*, available at <https://flboardofmedicine.gov/licensing/medical-doctor-unrestricted/> (last visited January 31, 2020).

<sup>12</sup> Florida Board of Osteopathic Medicine, *Osteopathic Medicine Full Licensure – Requirements*, available at <https://flboardofmedicine.gov/licensing/osteopathic-medicine-full-licensure/> (last visited January 31, 2020).

<sup>13</sup> Section 458.320, F.S.

<sup>14</sup> Section 458.320(2), F.S.

privileges must carry sufficient insurance or other financial responsibility in coverage amounts of not less than \$100,000 per claim.<sup>15</sup> Certain physicians who are exempted from the requirement to carry professional liability insurance or other financial responsibility must provide notice to their patients.<sup>16</sup> With specified exceptions, DOH must suspend, on an emergency basis, any licensed allopathic or osteopathic physician who fails to satisfy a medical malpractice claim against him or her within specified time frames.<sup>17</sup>

### Licensure Discipline

Chapter 456, F.S., contains the general regulatory provisions for health care professions and occupations under the Division of Medical Quality Assurance (MQA) in DOH. Section 456.072, F.S., specifies acts that constitute grounds for which disciplinary actions may be taken against a health care practitioner. Section 458.331, F.S., identifies acts that constitute grounds for which disciplinary actions may be taken against an allopathic physician and s. 459.015, F.S., identifies acts specific to an osteopathic physician. Some portions of the licensure discipline process are public and some are confidential.<sup>18</sup>

MQA reviews complaints against licensees to determine if the complaint is legally sufficient.<sup>19</sup> A determination of legal sufficiency is made if the ultimate facts show that a violation has occurred.<sup>20</sup> The complaint is forwarded for investigation if it is found to be legally sufficient. MQA notifies the complainant by letter to advise whether the complaint will be investigated, additional information is needed, or the complaint is being closed because it is not legally sufficient.<sup>21</sup> Complaints that involve an immediate threat to public safety are given the highest priority.

A probable cause panel of the appropriate board reviews all evidence and information gathered during the investigation and determine whether the case should be escalated to a formal administrative complaint, closed with a letter of guidance, or dismissed.<sup>22</sup> If a formal administrative complaint is filed, the case may be heard before an administrative law judge (ALJ) if it involves disputed issues of material fact and the ALJ will issue a recommended order.<sup>23</sup> The issue of whether a licensee has violated the laws and rules regulating the profession, including determining the reasonable standard of care, is a conclusion of law determined by the board.<sup>24</sup> The appropriate board will issue a final order in each disciplinary case.<sup>25</sup>

Authorization for the discipline of allopathic and osteopathic physicians can be found in state law and administrative rule.<sup>26</sup> If held liable for one of the offenses, the fines and sanctions by category and by offense are based on whether it is the physician's first, second, or third offense.<sup>27</sup> The boards may issue a written notice of noncompliance for the first occurrence of a single minor violation.<sup>28</sup> The amount of fines assessed can vary depending on the severity of the situation, such as improper use of

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<sup>15</sup> Section 458.320(1), F.S.

<sup>16</sup> Section 458.320(5)(f) and (g), F.S.

<sup>17</sup> Sections 458.320(8) and 459.0085(9), F.S.

<sup>18</sup> Fla. Department of Health, Division of Medical Quality Assurance, *Enforcement Process*, (last rev. Nov. 2019), available at <http://www.floridahealth.gov/licensing-and-regulation/enforcement/documents/enforcement-process-chart.pdf> (last visited January 31, 2020).

<sup>19</sup> Section 456.073, F.S.

<sup>20</sup> Fla. Department of Health, *Consumer Services – Administrative Complaint Process*, available at <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/consumer-services.html> (last visited January 31, 2020).

<sup>21</sup> *Id.*

<sup>22</sup> Fla. Department of Health, Medical Quality Assurance, *A Quick Guide to the MQA Disciplinary Process Probable Cause Panels*, available at <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/documents/a-quick-guide-to-the-mqa-disciplinary-process.pdf> (last visited January 31, 2020).

<sup>23</sup> Section 456.073(5), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Section 456.073(6), F.S.

<sup>26</sup> See ss. 458.307 and 459.004, F.S., for the regulatory boards, and rules 64B8-8 and 64B15-19, F.A.C., for administrative rules relating to disciplinary procedures.

<sup>27</sup> *Id.*

<sup>28</sup> Rules 64B8-8.011 and 64B15-19.0065, F.A.C. A minor violation is deemed to not endanger the public health, safety, and welfare and does not demonstrate a serious inability to practice.

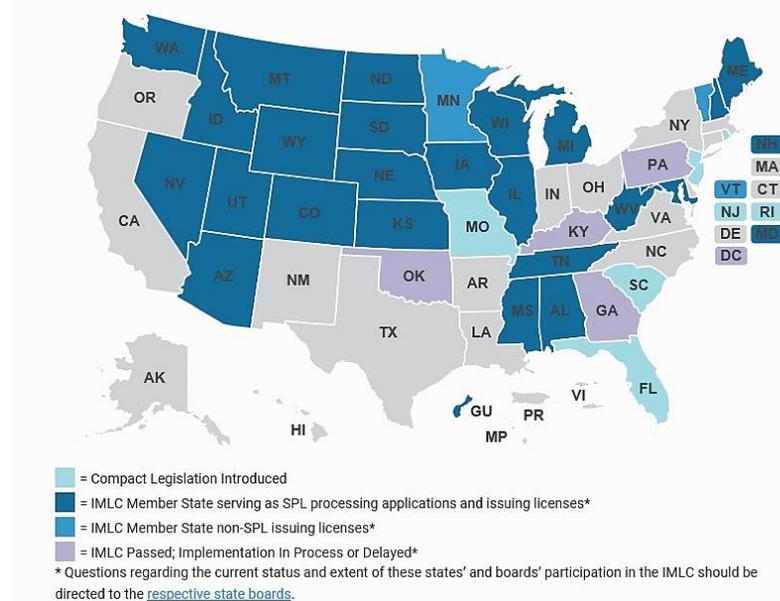
a substance to concealment of a material fact. A penalty may come in the form of a reprimand, a licensure suspension, or revocation followed by some designated period of probation if there is an opportunity for licensure reinstatement. Other sanctions may include supplemental continuing education requirements and require proof of completion before the license can be reinstated.

## Interstate Compacts

An interstate compact is an agreement between two or more states to address common problems or issues, create an independent, multistate governmental authority, or establish uniform guidelines, standards or procedures for the compact's member states.<sup>29</sup> Article 1, Section 10, Clause 3 (Compact Clause) of the U.S. Constitution authorizes states to enter into agreements with each other. Case law has provided that not all interstate agreements are subject to congressional approval, but only those that may encroach on the federal government's power.<sup>30</sup> There are currently more than 200 compacts between the states, including 50 national compacts of which six are for health professions.<sup>31,32</sup>

## Interstate Medical Licensure Compact

In 2013-2014, a group of state medical board executives, administrators, and attorneys created the model language of Interstate Medical Licensure Compact (IMLC).<sup>33</sup> The IMLC creates an expedited path to licensure by setting qualifications for licensure and outlining a process for physicians to apply and receive licenses in states where they are not currently licensed.<sup>34</sup> Twenty-nine states, the District of Columbia, and the Territory of Guam have adopted the IMLC.<sup>35</sup>



The model language of the IMLC provides the framework under which party states must operate. The Compact has 24 sections that establish the Compact's administration and components and prescribe

<sup>29</sup> Council of State Governments, Capitol Research, *Special Edition – Interstate Compacts*, available at <http://knowledgecenter.csg.org/kc/content/interstate-compacts-background-and-history> (last visited January 31, 2020).

<sup>30</sup> For example, see *Virginia v. Tennessee*, 148 U.S. 503 (1893), *New Hampshire v. Maine*, 426 U.S. 363 (1976)

<sup>31</sup> Ann O'M. Bowman and Neal D. Woods, *Why States Join Interstate Compacts*, The Council of State Governments (March 2017) p. 19 and 20, available at <http://knowledgecenter.csg.org/kc/system/files/Bowman%202017.pdf>, (last visited January 31, 2020).

<sup>32</sup> Federal Trade Commission, *Policy Perspectives: Options to Enhance Occupational License Portability* (September 2018), p. 9, available at [https://www.ftc.gov/system/files/documents/reports/options-enhance-occupational-license-portability/license\\_portability\\_policy\\_paper.pdf](https://www.ftc.gov/system/files/documents/reports/options-enhance-occupational-license-portability/license_portability_policy_paper.pdf) (last visited January 31, 2020). The six health professions are nurses, medical, emergency medical services, physical therapy, psychology, and advanced registered nurse practitioners. The only two compacts currently operational are the Enhanced Nurse Compact and the physicians compacts as the others are awaiting the completion of an administrative structure.

<sup>33</sup> Interstate Medical Licensure Compact, *The Interstate Medical Licensure Compact: Frequently Asked Questions*, available at <https://imlcc.org/faqs/> (last visited January 31, 2020).

<sup>34</sup> Id.

<sup>35</sup> Interstate Medical Licensure Compact, *The IMLC*, available at <https://imlcc.org/> (last visited January 31, 2020).

how the Interstate Medical Licensure Compact Commission will oversee the Compact and conduct its business. The table below describes, by Compact section, the components of the Compact.

<b>Provisions of the Interstate Medical Licensure Compact</b>		
<b>Section</b>	<b>Title</b>	<b>Description</b>
1	<p>Purpose</p> <p><i>Establishes prevailing standard of care</i></p>	<p>The purpose of the Interstate Medical Licensure Compact (Compact) is to provide a streamlined, comprehensive process that allows physicians to become licensed in multiple states. It allows physicians to become licensed without changing a state’s Medical Practice Act(s).</p> <p>The Compact adopts the prevailing standard of care based on where the patient is located at the time of the patient-provider encounter. Jurisdiction for disciplinary action or any other adverse actions against a physician’s license is retained in the jurisdiction where the license is issued to the physician.</p>
2	<p>Definitions</p> <p><i>Establishes standard definitions for operation of the Compact and the Commission.</i></p>	<p>Definitions are provided for:</p> <ul style="list-style-type: none"> <li>- Bylaws: means those Bylaws established by the Commission pursuant to Section 11 for governance, direction, and control of its action and conduct.</li> <li>- Commissioner: means the voting representative appointed by each member board pursuant to Section 11 whereby each member state appoints two members to the Commission. If the member state has two medical boards, the two representatives should entry between the two boards.</li> <li>- Conviction: means a finding by a court that an individual is guilty of a criminal offense through adjudication, or entry of a plea of guilt or no contest to the charge by the offender. A conviction also means evidence of an entry of a conviction of a criminal offense by the court shall be considered final for the purposes of disciplinary action by a member board.</li> <li>- Expedited license: means a full and unrestricted medical license granted by a member state to an eligible physician through the process set forth in the Compact.</li> <li>- Interstate Commission: means the interstate commission created pursuant to Section 11.</li> <li>- License: means authorization by a state for a physician to engage in the practice of medicine, which would be unlawful without the authorization.</li> <li>- Medical Practice Act: means laws and regulations governing the practice of allopathic and osteopathic medicine within a member state. (In Florida, the Medical Practice Act for allopathic medicine is under ch. 458, F.S., and for osteopathic medicine, under ch. 459, F.S.)</li> <li>- Member Board: means a state agency in a member state that acts in the sovereign interests of the state by protecting the public through licensure, regulation, and education of physicians as directed by the state government. (The Florida Board of Medicine and the Florida Board of Osteopathic Medicine are responsible for the licensure, regulation, and education of physicians in Florida.)</li> <li>- Member State: means a state that has enacted the Compact.</li> <li>- Practice of medicine: means the diagnosis, treatment, prevention, cure, or relieving of a human disease, ailment, defect, complaint, or other physical, or mental condition, by attendance, advise, device, diagnostic test, or other means, or offering, undertaking, attempting to do, or holding oneself out as</li> </ul>

**Provisions of the Interstate Medical Licensure Compact**

Section	Title	Description
		<p>able to do, any of these acts.</p> <ul style="list-style-type: none"> <li>- Physician means: any persons who is a graduate of 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; passed each component of the USMLE or the COMPLEX-USA within three attempts, or any of its predecessor examinations accepted by a state medical board as an equivalent examination for licensure purposes; successfully completed graduate medical education approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association; holds specialty certification or time-unlimited specialty certificate recognized by the American Board of Medical Specialties or the American Osteopathic Association’s Board of Osteopathic Specialties; however, the times unlimited specialty certificate does not have to be maintained once the physician is initially determined through the expedited Compact process; possess a full and unrestricted license to engage in the practice of medicine issued by a member board; has never been convicted received adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction; 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; has never had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration; and is not under active investigation by a licensing agency or law enforcement authority in any state, federal, or foreign jurisdiction.</li> <li>- Offense means: A felony, high court misdemeanor, or crime of moral turpitude.</li> <li>- Rule means: A written statement by the Commission promulgated pursuant to Section 12 of the Compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission, and has the force and effect of statutory law in a member state, if the rule is not inconsistent with the laws of the member state. The term includes the amendment, repeal, or suspension of an existing rule.</li> <li>- State means: Any state, commonwealth, district, or territory of the United States.</li> <li>- State of Principal License means: A member state where a physician holds a license to practice medicine and which has been designated as such by the physician for purposes of registration and participation in the Compact.</li> </ul>

Provisions of the Interstate Medical Licensure Compact		
Section	Title	Description
3	<p>Eligibility</p> <p><i>Provides minimum requirements to receive an expedited license</i></p>	<p>To be eligible to participate and receive an expedited license, a physician must meet the requirements of Section 2 (definition of physician).</p> <p>A physician who does not meet the requirements of Section 2 may obtain a license to practice medicine in a member state outside of the Compact if the individual complies with all of the laws and requirements to practice medicine in that state.</p>
4	<p>State of Principal License (SPL)</p> <p><i>Defines a SPL</i></p>	<p>The Compact requires participating physicians to designate a State of Principal License (SPL) for purposes of registration for expedited licensure if the physician possesses a full and unrestricted license to practice medicine in that state. The SPL must be a state where:</p> <ul style="list-style-type: none"> <li>- The physician has his/her primary residence, or</li> <li>- The physician has at least 25 percent of his/her practice, or</li> <li>- The state where the physician's employer is located.</li> </ul> <p>If no state qualifies for one of the above options, then the state of residence as designated on the physician's federal income taxes is the SPL. A SPL may be re-designated at any time as long as the physician possesses a full and unrestricted license to practice medicine in that state. The Commission is authorized to develop rules to facilitate the re-designation process.</p>
5	<p>Application and Issuance of Expedited Licensure</p> <p><i>Qualifications</i></p>	<p>Section 5 of the Compact establishes the process for the issuance of the expedited license.</p> <p>A physician must file an application with the member of the state selected as the SPL. The SPL will evaluate the application to determine whether the physician is eligible for the expedited licensure process and issue a letter of qualification, either verifying or denying eligibility, to the Commission.</p> <ul style="list-style-type: none"> <li>- Static Qualifications: Include verification of medical education, graduate medical education, results of any medical or licensing examinations and any other qualifications set by the Commission through rule.</li> <li>- Performance of Criminal Background Checks by the member board through FBI, with the exception of federal employees who have suitability determined in accordance with U.S. 5 CFR section 731.202.</li> <li>- Appeals on eligibility determinations are handled through the member state.</li> <li>- Upon completion of eligibility verification process with member state, applicants suitable for an expedited license are directed to complete the registration process with the Commission, including the payment of any fees.</li> <li>- After receipt of registration and payment of fees, the physician receives his/her expedited license. The license authorizes the physician to practice medicine in the issuing state consistent with the Medical Practice Act and all applicable laws and regulations of the issuing member board and member state.</li> <li>- An expedited license must be valid for a period consistent with the member state licensure period and in the same manner as required for other physicians holding a full and unrestricted license.</li> <li>- An expedited license obtained through the Compact must be</li> </ul>

Provisions of the Interstate Medical Licensure Compact		
Section	Title	Description
	<i>Commission rulemaking provisions</i>	<p>terminated if a physician fails to monitor a license in the SPL for a non-disciplinary reason, without re-designation of a new SPL.</p> <p>The Commission is authorized to develop rules relating to the application process, including fees and issuing the expedited license.</p>
6	<p>Fees for Expedited Licensure</p> <p><i>Rulemaking authority</i></p>	<p>A member state is authorized to charge a fee for an expedited license that is issued or renewed through the Compact. The individual state fees currently vary from a low of \$75.00 in Alabama to a high of \$700 in Maine.<sup>36</sup></p> <p>The Commission is authorized is develop rules relating to fees for expedited licenses. The rules are not permitted to limit the authority of the member states, the regulating authority of the member states, or to impose and determine the amount of the fee charged by the member states.</p>
7	<p>Renewal and Continued Participation <i>Renewal license process created</i></p> <p><i>Continuing education required for renewal with member state</i></p> <p><i>Fees collected, if any, by member state.</i></p> <p><i>Rulemaking authority.</i></p>	<p>A physician with an expedited license in a member state must complete a renewal process with the Commission if the physician:</p> <ul style="list-style-type: none"> <li>- Maintains a full and unrestricted license in a SPL.</li> <li>- Has not been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction.</li> <li>- Has not had a license authorizing the practice of medicine subject to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action relating to non-payment of fees related to a license.</li> <li>- Has not had a controlled substance license or permit suspended or revoked by a state or the United State Drug Enforcement Administration.</li> </ul> <p>Physicians are required to comply with all continuing education and professional development requirements for renewal of a license issued by a member state.</p> <p>The Commission must collect any renewal fees charged for the renewal of a license and distribute the fees to the appropriate member board. Upon payment of fees, a physician's license may be renewed. Any information collected during the renewal process shall also be shared with all member boards.</p> <p>The Commission is authorized to develop rules to address the renewal of licenses.</p>

<sup>36</sup> Interstate Medical Licensure Compact, *What Does It Cost?* <https://imlcc.org/what-does-it-cost/> (last visited Mar. 8, 2019).

**Provisions of the Interstate Medical Licensure Compact**

Section	Title	Description
8	<p>Coordinated Information Systems <i>Authorized to create database of all applicants</i></p> <p><i>By request, may share data</i></p> <p><i>Rulemaking authority</i></p>	<p>The Commission is required to establish a database of all licensed physicians who have applied for licensure. Member boards are required to report disciplinary or investigatory actions as required by Commission rule. Member boards may also report any non-public complaint, disciplinary, or investigatory information not required to be reported to the Commission.</p> <p>Upon request, member boards may share complaint or disciplinary information about physicians to another member board. All information provided to the Commission or distributed by the member boards shall be confidential, filed under seal, and used only for investigatory or disciplinary matters.</p> <p>The Commission is authorized to develop rules for mandated or discretionary sharing of information by member boards.</p>
9	<p>Joint Investigations</p> <p><i>Permits joint investigations between the state and the member boards</i></p>	<p>Licensure and disciplinary records of physicians are deemed investigative.</p> <p>A member board may participate with other member boards in joint investigations of physicians licensed by the member boards in addition to the authority granted by the member board and its respective Medical Practice Act or other respective state law.</p> <p>Member boards may share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact. Any member state may investigate actual or alleged violations of the statutes authorizing the practice of medicine in any other member state in which a physician holds a license to practice medicine.</p>
10	<p>Disciplinary Actions</p> <p><i>Licensure actions specific actions to reinstate</i></p> <p><i>Discipline by a member state has reciprocal actions</i></p>	<p>Any disciplinary action taken by any member board against a physician licensed through the Compact is be deemed unprofessional conduct which may be subject to discipline by other member boards, in addition to any violation of the Medical Practice Act or regulations in that State.</p> <p>If the physician’s license is revoked, surrendered, or relinquished in lieu of discipline in the SPL, or suspended, then all licenses issued to that physician by member boards are automatically placed, without any further action necessary by any member board, on the same status. If the SPL subsequently reinstates the physician’s license, a license issued to the physician by any other member board remains encumbered until that respective board takes action to specifically reinstate the license in a manner consistent with the Medical Practice Act in that state.</p> <p>If a disciplinary action is taken against the physician in a member state that is the physician’s SPL, any other member state may deem the action conclusive as to matter of law and fact decided, and:</p> <ul style="list-style-type: none"> <li>- Impose the same or lesser sanction or sanctions against the physician so long as such sanctions are consistent with the Medical Practice Act of that state; or</li> <li>- Pursue separate disciplinary action against the physician under the Medical Practice Act, regardless of the action taken in other</li> </ul>

**Provisions of the Interstate Medical Licensure Compact**

Section	Title	Description
		<p>member states.</p> <p>If a license granted to a physician by a member board is revoked, surrendered, or relinquished in lieu of discipline, or suspended, then any license issued to the physician by any other member board or boards is be suspended, automatically, and without further action necessary by the other board(s), for ninety (90) days upon entry of the order by the disciplining board, to permit the member board(s) to investigate the basis for the action under the Medical Practice Act of that state. A member board may terminate the automatic suspension of the license it issued prior to the completion of the ninety (90) day suspension period in a manner consistent with the Medical Practice Act of that state.</p>
11	<p>Interstate Medical Licensure Compact Commission</p> <p><i>Recognizes creation of Commission and state's representative with 2 Commissioners, one from each regulatory board</i></p> <p><i>Availability of Commission meetings, except for certain topics</i></p> <p><i>Public notice required</i></p>	<p>The member states create the Interstate Medical Licensure Compact Commission as a joint agency of the member states and administration of the Compact. The Commission has all the duties, powers, and responsibilities set forth in the Compact, plus any other powers conferred upon it by the member states through the Compact.</p> <p>Each member state has two (2) two voting representatives appointed by each member state to serve as Commissioners. For states with separate regulatory boards for allopathic and osteopathic regulatory boards, the member appoints one representative from each member board.</p> <p>A Commissioner must be:</p> <ul style="list-style-type: none"> <li>- An allopathic or osteopathic physician appointed to a member board.</li> <li>- Executive director, executive secretary, or similar executive or a member board, or</li> <li>- Member of the public appointed to a member board.</li> </ul> <p>The Commission must meet at least once per calendar year and at least a portion of the meeting shall be a business meeting which shall include the election of officers. The Chair may call additional meeting and shall call for all meeting upon the request of a majority of the member states.</p> <p>Meetings are permitted via telecommunication according to the Bylaws.</p> <p>Each Commissioner is entitled to one vote. A majority of Commissioners constitutes a quorum, unless a larger quorum is required by the Bylaws of the Commission. A Commissioner may not delegate a vote to another Commissioner. In the absence of its Commissioner, a member state may delegate voting authority for a specified meeting to another person from that state who meets the requirements of being a Commissioner.</p> <p>The Commission must provide public notice of all meetings and all meetings shall be open to the public. A meeting may be closed to the public, in full or in portion, when it determines by a 2/3 vote of the Commissioners present, that an issue or matter would likely to:</p> <ul style="list-style-type: none"> <li>- Relate solely to the internal personnel practices and procedures</li> </ul>

**Provisions of the Interstate Medical Licensure Compact**

Section	Title	Description
	<p><i>Availability of public data from the Commission</i></p> <p><i>Creates an executive committee to act on behalf of the Commission</i></p>	<p>of the Interstate Commission.</p> <ul style="list-style-type: none"> <li>- Discuss matters specifically exempted from disclosure by federal statute;</li> <li>- Discuss trade secrets, commercial, or financial information that is privileged or confidential;</li> <li>- Involve accusing a person of a crime, or formally censuring a person;</li> <li>- Discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;</li> <li>- Discuss investigative records compiled for law enforcement purposes; or</li> <li>- Specifically relate to the participation in a civil action or other legal proceeding.</li> </ul> <p>The Commission must make its information and official records, to the extent, not otherwise designated in the Compact or by its rules, available to the public for inspection.</p> <p>An executive committee is established which has the authority to act on behalf of the Commission, with the exception of rulemaking, when the Commission is not in session. The executive committee oversees the administration of the Compact, including enforcement and compliance with the Compact, its bylaws and rules, and other such duties as necessary.</p> <p>The Commission may establish other committees for governance and administration of the Compact.</p>
12	<p>Powers and Duties of the Interstate Commission</p> <p><i>Recognizes creation of the Commission</i></p>	<p>The Commission has the duties and the powers to:</p> <ul style="list-style-type: none"> <li>- Oversee and administer the Compact.</li> <li>- Promulgate rules which are binding.</li> <li>- Issue advisory opinions upon the request of member states concerning the meaning or interpretation of the Compact or its bylaws, rules, and actions.</li> <li>- Enforce compliance with the Compact, provisions, the rules, and the bylaws.</li> <li>- Establish and appoint committees, including the executive committee, which has the power to act on behalf of the Interstate Commission.</li> <li>- Pay, or provide for the payment of Commission expenses.</li> <li>- Establish and maintain one or more offices.</li> <li>- Borrow, accept, hire, or contract for services of personnel.</li> <li>- Purchase and maintain insurance and bonds.</li> <li>- Employ an executive director with power to employ, select, or appoint employees, agents, or consultants, determine their duties, and fix their compensation.</li> <li>- Establish personnel policies and programs.</li> <li>- Accept donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize and dispose of it consistent with conflict of interest policies as established by the Commission.</li> <li>- Lease, purchase, accept contributions, or donation of, or otherwise own, hold, improve or use, any property, real, personal, or mixed.</li> <li>- Establish a budget and make expenditures.</li> </ul>

Provisions of the Interstate Medical Licensure Compact		
Section	Title	Description
		<ul style="list-style-type: none"> <li>- Adopt a seal and bylaws governing the management and operation of the Commission.</li> <li>- Report annually to the legislatures and governors of the members concerning the activities of the Commission during the preceding year, including reports of financial audits and any recommendations that may have been adopted by the Commission.</li> <li>- Coordinate education, training, and public awareness regarding the Compact, its implementation and operation.</li> <li>- Maintain records in accordance with bylaws.</li> <li>- Seek and obtain trademarks, copyrights, and patents.</li> <li>- Perform such functions as may be necessary or appropriate to achieve the purpose of the Compact.</li> </ul>
13	<p>Finance Powers</p> <p><i>Provides for annual assessment</i></p> <p><i>Requires rule for any assessment</i></p> <p><i>No pledging credit without authorization</i></p> <p><i>Yearly audits</i></p>	<p>The Compact authorizes an annual assessment levied on each member state to cover the costs of operations and activities of the Commission and its staff. The assessment must be sufficient to cover the amount not provided by other sources and needed to cover the annual budget approved each year by the Commission.</p> <p>The Compact requires that the assessment be memorialized by rule binding all the member states.</p> <p>The Commission is not authorized to pledge the credit of any of the member states, except by, and with the authority of, the member states.</p> <p>The Compact requires yearly financial audits conducted by a certified or licensed public accountant and the report is to be included in the Commission's annual report.</p>
14	<p>Organization and Operation of the Interstate Commission</p> <p><i>Annual officer election</i></p> <p><i>No officer remuneration</i></p> <p><i>Liability protection for actions within scope of duties and responsibilities only for</i></p>	<p>The Compact creates a requirement for the Commission to adopt bylaws by a two-thirds (2/3) vote within twelve months of the first meeting which has already occurred. The first Bylaws were adopted in October 2015.<sup>37</sup></p> <p>A Chair, Vice Chair, and Treasurer are to be elected or appointed each year by the Commission.</p> <p>Officers serve without remuneration. Officers and employees are immune from suit and liability, either personally or in their professional capacity, for a claim for damage to or loss of property or personal injury or other civil liability cause or arising out of, or relating to, an actual or alleged act, error or omission that occurred with the scope of Commission employment, duties, or responsibilities, provided such person should not be protected from suit or liability for damage or loss, injury or liability caused by the intentional or willful and wanton conduct of such a person.</p> <p>The liability of the executive director and Commission employees or representatives of the Commission, acting within the scope of their employment, may not exceed the limits set forth under the state's Constitution and laws for state officials, employees, and agents.</p>

<sup>37</sup> Interstate Medical Licensure Compact, *Annual Report 2017*, <https://imlcc.org/wp-content/uploads/2018/03/IMLCC-Annual-Report-2017-1.pdf> (last visited Mar. 11, 2019).

Provisions of the Interstate Medical Licensure Compact		
Section	Title	Description
	<i>officers, employees, and agents</i>	<p>The Compact provides that the Commission is considered an instrumentality of the state for this purpose.</p> <p>The Compact provides that the Commission must defend the executive director, its employees, and subject to the approval of the state's attorney general or other appropriate legal counsel, must defend in any civil action seeking to impose liability within scope of duties.</p> <p>The Compact provides that employees and representatives of the Commission shall be held harmless in the amount of any settlement or fees, including attorney fees and costs that occurred within the scope of employment or responsibilities and not a result of willful or wanton misconduct.</p>
15	<p>Rulemaking Functions of the Interstate Commission</p> <p><i>Promulgate reasonable rules</i></p> <p><i>Judicial review at U.S. Federal District Court</i></p>	<p>The Commission is required to promulgate reasonable rules in order to implement and operate the Compact and the Commission. The Compact adds that any attempt to exercise rulemaking beyond the scope of the Compact renders the action invalid. The rules should substantially conform to the "Model State Administrative Procedures Act" of 2010 and subsequent amendments thereto.</p> <p>The Compact allows for judicial review of any promulgated rule. A petition may be filed thirty (30) days after a rule has been promulgated in the U.S. District Court in Washington, D.C., or the federal court where the Commission is located.<sup>38</sup> The Compact requests deference to the Commission's action consistent with state law.</p>
16	<p>Oversight of Interstate Contract Enforcement</p> <p><i>Service of process</i></p>	<p>The Compact is the responsibility of each state's own executive, legislative, and judicial branch to oversee and enforce. All courts are to take judicial notice of the Compact and any adopted administrative rules in a proceeding involving Compact subject matter.</p> <p>The Compact provides that the Commission is entitled to receive service of process in any proceeding and have standing in any proceeding. Failure to serve the Commission renders a judgment null and void as to the Commission, the Compact, or promulgated rule.</p>
17	Enforcement of Interstate Contract	The Compact provides the Commission reasonable discretion to enforce the provisions and rules of the Compact, including when and where to initiate legal action. The Commission is permitted to seek a range of remedies.
18	Default Procedures	<p>The Compact provides a number of reasons a member state may default on the Compact, including failure to perform required duties and responsibilities and the options available to the Commission.</p> <p>The Compact requires the Commission to promulgate rules to address how physician licenses are affected by the termination of a member state from the Compact. The rules must also ensure that a member state does not bear any costs when a state has been found to be in default.</p>

<sup>38</sup> The Interstate Medical Licensure Compact Commission is currently headquartered in Littleton, Colorado. See Interstate Medical License Commission, Frequently Asked Questions (FAQS), <https://imlcc.org/faqs/>

Provisions of the Interstate Medical Licensure Compact		
Section	Title	Description
		The Compact provides an appeal process for the terminating state and procedures for attorney's fees and costs.
19	Dispute Resolution	The Compact authorizes the Commission to use dispute resolution tools to resolve disputes between states, such as mediation and binding dispute resolution. The Commission must promulgate rules for the dispute resolution process.
20	Member States, Effective Date and Amendment	The Compact allows any state to become a member state and that the Compact is binding upon the legislative enactment of the Compact by no less than seven (7) states. <sup>39</sup>
21	Withdrawal	<p>A member state may withdraw from the Compact through repeal of this section of law which inserted the Compact into state statute. Any repeal of the Compact through repeal of the state law cannot take effect until one (1) year after the effective date of such an action and written notice has been given by the withdrawing state to the governor of each other member state.</p> <p>The Compact provision also requires that upon introduction of any repeal legislation, that the withdrawing state immediately notify the Chairperson of the Commission of the legislation.</p> <p>The Compact provides that it is the Commission's responsibility to notify the other member states within 60 (sixty) days of its receipt of information about legislation that would repeal that state's participation in the Compact. The withdrawing state would be responsible for any dues, obligations, or liabilities incurred through the date of withdrawal. Reinstatement is an option under the Compact.</p> <p>The Compact authorizes the Commission to develop rules to address the impact of the withdrawal of a member state on licenses.</p>
22	Dissolution	<p>When the membership of the Compact is reduced to one, the Compact shall be dissolved. Once dissolved, the Compact is null and void.</p> <p>Once concluded, any surplus funds of the Commission shall be distributed in accordance with the bylaws.</p>
23	Severability and Construction	<p>If any part of this Compact is not enforceable, the remaining provisions are still enforceable.</p> <p>The provisions of the Compact are to be liberally construed, and nothing is to be construed so as to prohibit the applicability of other interstate compacts to which states might be members.</p>
24	Binding Effect of Compact and Other Laws	<p>This Compact does not prohibit the enforcement of other laws which are not in conflict with this Compact. All laws which are in a member state which are inconsistent with this Compact are superseded to the point of the contact.</p> <p>The actions of the Commission are binding on the member states, including all promulgated rules and the adopted bylaws of the Commission. All agreements between the Commission and the</p>

<sup>39</sup> The Compact is in force now. The Commission was seated for the first time in October 2015 and issued its first letters of qualification to physicians in April 2017. See Interstate Medical Licensure Compact, <https://imlcc.org/faqs/> (last Mar. 11, 2019).

Provisions of the Interstate Medical Licensure Compact		
Section	Title	Description
		<p>member state are binding in accordance with their terms.</p> <p>In the event that any provision of this Compact exceeds Florida's constitutional limits imposed on the legislature of any member state, such provision is ineffective to the extent that the conflict of the constitutional provision in question in that member state.</p>

### OPPAGA Review of the IMLC

Chapter 2019-138, Laws of Florida, directed the Office of Program Policy Analysis and Government Accountability (OPPAGA) to analyze the IMLC and develop recommendations addressing Florida's prospective entry into the Compact. On October 1, 2019, OPPAGA published its report.<sup>40</sup> To avoid legal conflict, OPPAGA recommended that the Legislature:

- Repeal Florida's initial licensure provisions that fall outside of the Compact's licensure provisions. Florida does not license persons who are listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.<sup>41</sup> The Compact has no comparable requirement.
- Enact statutory language providing physicians who practice in Florida whose licenses were revoked in their State of Principal License (SPL) an opportunity to challenge the reason for the revocation or suspension in Florida.
- Enact statutory language clarifying that the Compact pays claims or judgments arising from the Commission's employment-related actions in the state.
- Provide an exception from public meeting requirements to allow closed meetings of the Commission.
- Provide an exception from public records requirements to exempt application records received by the Commission from disclosure.
- Set a Compact implementation date to ensure that the DOH would have adequate time to make required changes to rule, forms, and technological infrastructure in order to process licenses through the Compact.

OPPAGA also found that the average time to receive a license through the IMLC is 55 days, while the average time to receive a license from the state of Florida is 10-15 days.<sup>42</sup> The average time to receive a license through the IMLC is 19 days if the time for obtaining the Letter of Qualification is excluded.

**While The Average Time to Receive a License Via the Compact Is Higher Than the Average Time to Receive a Florida License, Physicians May Receive Multiple Licenses Under the Compact Process**

Licensure Process	Average Number of Days to Receive an LOQ	Average Number of Days to Receive a License	Total Time (In Average Number of Days) to Receive a License	Type of License Received
Florida Licensure	N/A	10-15 days <sup>12</sup>	10-15 days <sup>12</sup>	Florida License
Compact Licensure	36 days	19 days	55 days	One or more licenses in compact state(s) of physician's choice

<sup>1</sup> The average number of days for licensure was 10 days for osteopathic physicians and 15 days for medical doctors.

<sup>2</sup> This is the average time to receive a license under circumstances where there are no complications or missing information from the applications. Source: OPPAGA analysis of Florida Department of Health data and commission data.

### Sovereign Immunity

Sovereign immunity generally bars lawsuits against the state or its political subdivisions for torts committed by an officer, employee, or agent of such governments unless the immunity is expressly waived. The Florida Constitution recognizes that the concept of sovereign immunity applies to the state, although the state may waive its immunity through the enactment of general law.<sup>43</sup>

<sup>40</sup> Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Florida's Participation in the Interstate Medical Licensure Compact Would Require Statutory Changes to Avoid Legal Conflicts*, Report No. 19-07, (Oct. 1, 2019) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1907rpt.pdf> (last visited January 31, 2020).

<sup>41</sup> Section 456.0635, F.S.

<sup>42</sup> *Supra* note 40.

<sup>43</sup> FLA. CONST. art. X, s. 13.

In 1973, the Legislature enacted s. 768.28, F.S., a partial waiver of sovereign immunity, allowing individuals to sue state government and its subdivisions.<sup>44</sup> According to subsection (1), individuals may sue the government under circumstances where a private person “would be liable to the claimant, in accordance with the general laws of [the] state . . .” Section 768.28(5), F.S., imposes a \$200,000 limit on the government’s liability to a single person, and a \$300,000 total limit on liability for claims arising out of a single incident.

### Florida Center for Nursing

The Legislature established the Florida Center for Nursing (Center) to address the supply and demand of nurses in the state, including issues of recruitment, retention, and utilization of nurse workforce resources.<sup>45</sup> The primary goals of the Center are to:

- Develop a strategic statewide plan for nursing manpower in this state by:
  - Establishing and maintaining a database on nursing supply and demand in the state, to include current supply and demand;
  - Analyzing the current supply and demand in the state and making future projections of such; and
  - Selecting priorities to be addressed.
- Convene various groups representative of nurses, other health care providers, business and industry, consumers, legislators, and educators to:
  - Review and comment on data analysis prepared for the center;
  - Recommend systemic changes, including strategies for implementation of recommended changes; and
  - Evaluate and report the results of these efforts to the Legislature and others.
- Enhance and promote recognition, reward, and renewal activities for nurses in the state by:
  - Promoting nursing excellence programs such as magnet recognition by the American Nurses Credentialing Center;
  - Proposing and creating additional reward, recognition, and renewal activities for nurses; and
  - Promoting media and positive image-building efforts for nursing.

The Center is governed by a 16-member board of directors, which includes:

- Four members recommended by the President of the Senate, at least one of whom shall be a registered nurse recommended by the Florida Organization of Nurse Executives and at least one other representative of the hospital industry recommended by the Florida Hospital Association;
- Four members recommended by the Speaker of the House of Representatives, at least one of whom shall be a registered nurse recommended by the Florida Nurses Association and at least one other representative of the long-term care industry;
- Four members recommended by the Governor, two of whom shall be registered nurses;
- One nurse educator recommended by the Board of Governors who is a dean of a College of Nursing at a state university; and
- Three nurse educators recommended by the State Board of Education, one of whom must be a director of a nursing program at a Florida College System institution.

The powers and duties of the board of directors include:

- Employing an executive director;
- Determining operational policy;
- Electing a chair and officers, to serve 2-year terms;
- Establishing committees of the board;

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<sup>44</sup> Chapter 73-313, L.O.F., codified at s. 768.28, F.S.

<sup>45</sup> Section 464.0195, F.S.

- Appoint a multidisciplinary advisory council for input and advice on policy matters;
- Implementing the major functions of the center as established in the goals; and
- Seeking and accepting non-state funds for sustaining the center and carrying out center policy.

## Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling

### *Intern Registration*

To be licensed as a clinical social worker, marriage and family therapist, or mental health counselor, an applicant must meet educational requirements, complete at least 2 years of postgraduate or postmaster's clinical practice supervised by a licensed practitioner, and pass a theory and practice examination.<sup>46</sup> During the time in which an applicant is completing the required supervised clinical experience or internship, he or she must register with the DOH as an intern.<sup>47</sup> The supervised clinical experience may be met by providing at least 1,500 hours of face-to-face psychotherapy with clients, which may not be accrued in less than 100 weeks.<sup>48</sup>

An applicant seeking registration as an intern must:<sup>49</sup>

- Submit a completed application form and the nonrefundable fee to the DOH;
- Complete education requirements;
- Submit an acceptable supervision plan for meeting the practicum, internship, or field work required for licensure that was not satisfied by graduate studies; and
- Identify a qualified supervisor.

An intern registration expires 60 months after the date of issue and may only be renewed if the candidate has passed the theory and practice examination required for full licensure.<sup>50</sup> DOH has no authority to extend an intern registration beyond the 60 months if there are extenuating circumstances.

### *Certified Master Social Workers*

Currently, an individual may be designated as a certified master social worker if the individual applies to DOH and submits an application fee of \$50 and an initial certification fee of \$150.<sup>51</sup> To qualify for certification, an applicant must:

- Possess a master's or doctoral degree from an accredited program; and
- Have at least three years' experience in clinical service or administrative activities, two of which must be at the post-master's level.

There is no defined scope of practice for certified master's social workers in statute or rule. However, statute expressly prohibits certified master social workers from providing clinical services.<sup>52</sup>

### *Licensed Clinical Social Workers*

Licensed clinical social work uses scientific and applied knowledge, theories, and methods for the purpose of describing, preventing, evaluating, and treating individual, couple, marital, family, or group behavior, based on the person-in-situation perspective of psychosocial development, normal and abnormal behavior, psychopathology, unconscious motivation, interpersonal relationships, environmental stress, differential assessment, differential planning, and data gathering to prevent and

<sup>46</sup> Section 491.005, F.S. A procedure for licensure by endorsement is provided in s. 491.006, F.S.

<sup>47</sup> Section 491.0045, F.S.

<sup>48</sup> Rule 64B4-2.001, F.A.C.

<sup>49</sup> Section 491.0045(2), F.S.

<sup>50</sup> Section 491.0045(6), F.S.

<sup>51</sup> Rule 64B25-28.002, F.A.C. Section 491.0145, F.S., authorizes an application fee of up to \$250 and an examination fee of up to \$250.

<sup>52</sup> Section 491.0145(6), F.S.

treat undesired behavior and enhance of mental health.<sup>53</sup> An applicant seeking licensure as a clinical social worker must:<sup>54</sup>

- Possess a master's or doctoral degree from an accredited program;
- Have a least two years' experience in clinical social work;
- Pass a theory and practice examination approved by DOH; and
- Demonstrate knowledge of laws and rules governing the practice.

Licensed Clinical Social Workers must pass an examination offered by the American Association of State Social Worker Boards.<sup>55</sup> In 1999, the American Association of State Social Worker Boards changed its name to the Association of Social Work Boards.<sup>56</sup>

### *Marriage and Family Therapists*

Marriage and family therapy incorporates marriage and family therapy, psychotherapy, hypnotherapy, sex therapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients.<sup>57</sup> An applicant seeking licensure as a mental health counselor must:<sup>58</sup>

- Possess a master's degree from an accredited program;
- Complete 36 semester hours of graduate coursework that includes a minimum of 3 semester hours of graduate-level coursework in:
  - The dynamics of marriage and family systems;
  - Marriage therapy and counseling theory;
  - Family therapy and counseling theory and techniques;
  - Individual human development theories throughout the life cycle;
  - Personality or general counseling theory and techniques;
  - Psychosocial theory; and
  - Substance abuse theory and counseling techniques.
- Complete at least one graduate-level course of 3 semester hours in legal, ethical, and professional standards;
- Complete at least one graduate-level course of 3 semester hours in diagnosis, appraisal, assessment, and testing for individual or interpersonal disorder or dysfunction;
- Complete at least one graduate-level course of 3 semester hours in behavioral research;
- Complete at least one supervised clinical practicum, internship, or field experience in a marriage and family counseling setting, during which the student provided 180 direct client contact hours of marriage and family therapy services;
- Complete two years of post-master's supervised experience under the supervision of a licensed marriage and family therapist with five years of experience or the equivalent who is a qualified supervisor as determined by the board;
- Pass a board-approved examination; and
- Demonstrate knowledge of laws and rules governing the practice.

DOH must verify that an applicant's education matches the specified courses and hours as outlined in statute. However, there are organizations that accredit marriage and family therapy education programs, including the Commission on Accreditation for Marriage and Family Therapy Education and

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<sup>53</sup> Section 491.003(7), F.S.

<sup>54</sup> Section 491.005(1), F.S.

<sup>55</sup> Id.

<sup>56</sup> Association of Social Work Boards, *History*, available at <https://www.aswb.org/about/history/> (last visited January 31, 2020).

<sup>57</sup> Id.

<sup>58</sup> Section 491.005(3), F.S. An individual may qualify for a dual license in marriage and family therapy if he or she passes an examination in marriage and family therapy and has held an active license for at least three years as a psychologist, clinical social worker, mental health counselor, or advanced registered nurse practitioner who is determined by the Board of Nursing to be a specialist in psychiatric mental health (s. 491.0057, F.S.)

the Council for the Accreditation of Counseling and Related Educational Programs that establish the minimum standards to meet the requirements to practice the profession.<sup>59</sup>

### *Mental Health Counselors*

A mental health counselor is an individual who uses scientific and applied behavioral science theories, methods, and techniques to describe, prevent, and treat undesired behavior and enhance mental health and human development and is based on research and theory in personality, family, group, and organizational dynamics and development, career planning, cultural diversity, human growth and development, human sexuality, normal and abnormal behavior, psychopathology, psychotherapy, and rehabilitation.<sup>60</sup> To qualify for licensure as a mental health counselor, an individual must:<sup>61</sup>

- Have a master's degree from a mental health counseling program accredited by the Council of the Accreditation of Counseling and Related Educational Programs, or a program related to the practice of mental health counseling that includes coursework and a 1,000-hour practicum, internship, or fieldwork of at least 60 semester hours that meet certain requirements;
- Have at least two years of post-master's supervised clinical experience in mental health counseling;
- Pass an examination from the Professional Examination Service for the National Academy of Certified Clinical Mental Health Counselors; and
- Pass an eight-hour course on Florida laws and rules approved by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.<sup>62</sup>

Currently, an applicant for a mental health counselor license must, by rule, pass the National Clinical Mental Health Counseling Examination. Current law refers to an outdated mental health counseling examination.

### **Effect of Proposed Changes**

#### **Interstate Medical Licensure Compact**

CS/HB 1143 enacts the Interstate Medical Licensure Compact (see a description of the compact provisions in the Present Situation section), and authorizes Florida to enter into the IMLC with all other jurisdictions that have legally joined the IMLC. The bill authorizes DOH to adopt rules to implement the IMLC. Under the bill, any physician licensed to practice medicine or osteopathic medicine under the IMLC is deemed to be licensed under chapter 458 F.S., or chapter 459, F.S., respectively.

The bill provides Florida-licensed physicians or those licensed under the IMLC whose licensure is disciplined by another state access to the administrative review process under Florida law.

#### *Commissioners*

The bill requires the appointed commissioners to ensure that the IMLC Commission complies with Florida laws on public records and open meetings. The bill also provides that commissioners and any administrator, officer, executive director, employee, or representative of the IMLC Commission, when acting within the scope of their employment or responsibilities in this state are considered agents of the state. The bill requires the IMLC Commission to pay any claims or judgments that arise and authorizes the IMLC Commission to maintain insurance coverage to any such claims or judgments.

#### **Florida Center for Nursing Board of Directors**

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<sup>59</sup> See Commission on Accreditation for Marriage and Family Therapy Education, *What Are the Benefits of COAMFTE Accreditation*, available at [https://www.coamfte.org/COAMFTE/Accreditation/About\\_Accreditation.aspx](https://www.coamfte.org/COAMFTE/Accreditation/About_Accreditation.aspx) (last visited December 2, 2019), and Council for the Accreditation of Counseling and Related Educational Programs, *About CACREP*, available at <https://www.cacrep.org/about-cacrep/> (last visited December 2, 2019).

<sup>60</sup> Sections 491.003(6) and (9), F.S.

<sup>61</sup> Section 491.005(4), F.S.

<sup>62</sup> Section 491.005(4), F.S., and r. 64B4-3.0035, F.A.C.

The bill revises the requirements for appointment to the Florida Center for Nursing Board of Directors. The bill retains the number of members that the Governor, President of the Senate, Speaker of the House of Representatives, the Board of Governors, and the State Board of Education must appoint, but removes the specifications for such appointments.

## Mental Health Professions

### *Certified Master Social Workers*

The bill requires DOH to license, as a certified master social worker (CMSW), an individual who applies to DOH and:

- Remits the appropriate fee as established by the Board;<sup>63</sup>
- Submits proof of receipt of a doctoral degree in social work or a master's degree to the Board;
- Submits proof of two years' experience providing clinical services or performing administrative activities to the Board; and
- Passes the Board-designated licensure examination.

The bill defines the scope of practice for a certified master social worker as the application of social work theory, knowledge, methods, and ethics, and the professional use of the self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, or communities. This also includes the application of specialized knowledge and advanced practice skills in non-diagnostic assessment, treatment planning, implementation and evaluation, case management, information and referral, supervision, consultation, education, research, advocacy, community organization, and the development, implementation, and administration of policies, programs, and activities.

The bill requires CMSWs to use the title "certified master social worker" and the acronym "CMSW" on all promotional materials, including cards, brochures, stationery, advertisements, social media and signs on which the CMSW is named.

### *Mental Health Interns*

The bill authorizes the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling to make a one-time exception to the 60-month limit on an internship registration. Such exceptions may only be granted in an emergency or hardship case, as defined by rule. The bill deletes obsolete language related to biennial renewals of intern registrations.

### *Licensed Clinical Social Workers*

The bill updates the name of the organization that administers the licensure examination for clinical social work licensure applicants to the Association of Social Work Boards, which was previously known as the American Association of State Social Work Boards.<sup>64</sup> The bill requires the Board, rather than DOH, to designate the theory and practice examination for licensure.

The bill also eliminates the specified coursework required for licensure that is currently enumerated in statute, and authorizes the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling adopt rules on the specific course requirements. This will simplify the education review process and expedite licensure.<sup>65</sup>

### *Marriage and Family Therapists*

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<sup>63</sup> Under current law, DOH is authorized to charge a nonrefundable application fee of up to \$250, as established by DOH rule.

<sup>64</sup> See Association of Social Work Boards, *History*, available at <https://www.aswb.org/about/history/> (last visited January 30, 2020).

<sup>65</sup> Fla. Department of Health, *2020 Agency Legislative Bill Analysis for HB 1143*, (Jan. 21, 2020), on filed with the Health Quality Subcommittee.

The bill requires that an applicant for licensure hold a master's degree with an emphasis in marriage and family therapy from a program accredited by the Commission of Accreditation for Marriage and Family Therapy Education or a Florida university program accredited by the Council for Accreditation of Counseling and Related Educational Programs. An applicant may also qualify for licensure if he or she holds a master's degree in a closely related field and has completed graduate courses approved by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling. The bill eliminates specified coursework and clinical experience required for licensure that is currently enumerated in statute.

To be licensed as a marriage and family therapist, s. 491.005(3), F.S., requires an applicant to complete two years of clinical experience. However, later in the same paragraph, it states the clinical experience required is three years. The bill corrects the scrivener's error in the paragraph to clarify that two years of clinical experience is required for licensure. The bill requires the Board, rather than DOH, to designate the theory and practice examination for licensure.

#### *Licensed Mental Health Counselors*

The bill updates the name of the organization that administers the licensure examination for mental health counseling licensure applicants to the National Board for Certified Counselors or its successor. The bill revises the content areas that must be included in educational programs used to qualify for licensure to include substance abuse; legal, ethical, and professional standards issues in the practice of mental health counseling; and diagnostic process.

The bill reduces the number of hours required for the clinical practicum or internship from 1,000 hours to 700 hours to conform the number of hours to the accreditation standards established by the Council for Accreditation of Counseling and Related Educational Programs. The bill requires the clinical practicum or internship to include at least 280 hours of direct client services. The bill requires the Board, rather than DOH, to designate the theory and practice examination for licensure.

The bill requires that applicants who apply for licensure after July 1, 2026, hold a master's degree from a program accredited by the Council for Accreditation of Counseling and Related Educational Programs.

#### *Licensure by Endorsement*

The bill repeals educational requirements for applicants for licensure by endorsement. Such applicant qualifies for licensure if he or she holds a valid, active license to practice in another state for three of the five years preceding the date of application, passes an equivalent licensure examination, and is not under investigation for and has not been found to have committed any act that would constitute a licensure violation in Florida.

The bill clarifies that DOH may deny or impose penalties on the license of a certified master social worker who violates the practice act or ch. 456, F.S., the general regulatory statute by deleting an inaccurate reference to psychologists. This will alleviate confusion regarding the authority of DOH to impose such discipline or deny a license.

The bill also adds social media to the list of promotional materials required to include the professional titles of all licensees, certificate holders, provisional licensees and interns in professions of clinical social work, marriage and family therapy, and mental health counseling.

The bill makes conforming changes and deletes obsolete provisions.

The bill provides an effective date of July 1, 2020.

## **B. SECTION DIRECTORY:**

**Section 1:** Creates s. 456.4501, F.S., relating to Interstate Medical Licensure Compact.

- Section 2:** Creates s. 456.4502, F.S., relating to Interstate Medical Licensure Compact; disciplinary proceedings.
- Section 3:** Creates s. 456.4503, F.S., relating to Interstate Medical Licensure Compact Commissioners.
- Section 4:** Creates s. 456.4504, F.S., relating to Interstate Medical Licensure Compact rules.
- Section 5:** Creates s. 458.3129, F.S., relating to Interstate Medical Licensure Compact.
- Section 6:** Creates s. 459.074, F.S., relating to Interstate Medical Licensure Compact.
- Section 7:** Amends s. 464.0196, F.S., relating to Florida Center for Nursing; board of directors.
- Section 8:** Amends s. 491.003, F.S., relating to definitions.
- Section 9:** Amends s. 491.004, F.S., relating to Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.
- Section 10:** Amends s. 491.0045, F.S., relating to intern registration, requirements.
- Section 11:** Amends s. 491.005, F.S., relating to licensure by examination.
- Section 12:** Amends s. 491.0057, F.S., relating to dual licensure as a marriage and family therapist.
- Section 13:** Amends s. 491.006, F.S., relating to licensure or certification by endorsement.
- Section 14:** Amends s. 491.007, F.S., relating to renewal of license, registration, or certificate.
- Section 15:** Amends s. 491.009, F.S., relating to discipline.
- Section 16:** Amends s. 491.012, F.S., relating to violations; penalty; injunction.
- Section 17:** Amends s. 491.0145, F.S., relating to certified master social workers.
- Section 18:** Amends s. 491.0149, F.S., relating to display of license; use of professional title on promotional materials.
- Section 19:** Repeals s. 491.015, F.S., relating to duties of the department as to certified master social workers.
- Section 20:** Amends s. 768.28, F.S., relating to waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; risk management programs.
- Section 21:** Amends s. 414.065, F.S., relating to noncompliance with work requirements.
- Section 22:** Provides an effective date of July 1, 2020.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

DOH may experience a recurring increase in revenue associated with the application and initial and renewal licensure fees under the IMLC.<sup>66</sup> It is unknown how many physicians may apply.

#### 2. Expenditures:

DOH will incur rulemaking costs associated with the IMLC, Certified Master Social Workers, Mental Health Interns, Licensed Clinical Social Workers, Marriage and Family Therapists, and Licensed Mental Health Counselors, which current resources are adequate to absorb.<sup>67</sup>

DOH may experience additional workload related to a possible increase in the number of physicians licensed in Florida under the IMLC and the preparation of letters of qualification for Florida licensees.<sup>68</sup> With an increase in licensees, costs associated with regulation and complaints and investigations will increase.<sup>69</sup> It is estimated the additional licensure fee revenue will offset these costs.

DOH will incur costs to update the LEIDS licensing system with IMLC information and to create a process for sharing information with the IMLC commission. This cost is currently unknown, however, it is estimated current resources are adequate to absorb.<sup>70</sup>

<sup>66</sup> Id at p. 9.

<sup>67</sup> Id.

<sup>68</sup> Id.

<sup>69</sup> Id.

<sup>70</sup> Id.

Additionally, there may be a negative fiscal impact on the Division of Administrative Hearings if physicians who are disciplined request a formal hearing. It is not known how many hearings there may be so the impact is indeterminate.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The IMLC may lead to more physicians practicing in Florida, which may increase access for patients and create additional competition for existing physicians.

**D. FISCAL COMMENTS:**

None.

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect municipal or county governments.

2. Other:

Delegation of Legislative Authority

The bill delegates authority to the commission to adopt rules that facilitate and coordinate the implementation and administration of the IMLC.

If enacted into law, the state will effectively bind itself to rules not yet adopted by the commission. The Florida Supreme Court has held that while it is within the province of the Legislature to adopt federal statutes enacted by Congress and rules promulgated by federal administrative bodies that are in existence at the time the Legislature acts, it is an unconstitutional delegation of legislative power to prospectively adopt federal statutes not yet enacted by Congress and rules not yet promulgated by federal administrative bodies.<sup>71,72</sup> Under this holding, the constitutionality of the bill's adoption of prospective rules might be questioned, and there does not appear to be binding Florida case law that squarely address this issue in the context of interstate compacts.

The most recent opportunity Florida courts have had to address this issue appears to be in *Department of Children and Family Services v. L.G.*, involving the Interstate Compact for the Placement of Children (ICPC).<sup>73</sup> The First District Court of Appeal considered an argument that the regulations adopted by the Association of Administrators of the Interstate Compact were binding and that the lower court's order permitting a mother and child to relocate to another state was in violation

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<sup>71</sup> *Freimuth v. State*, 272 So.2d 473, 476 (Fla. 1972) (quoting *Fla. Ind. Comm'n v. State ex rel. Orange State Oil Co.*, 155 Fla. 772 (1945).

<sup>72</sup> This prohibition is based on the separation of powers doctrine, set forth in Article II, Section 3 of the Florida Constitution, which has been construed in Florida to require the Legislature, when delegating the administration of legislative programs, to establish the minimum standards and guidelines ascertainable by reference to the enactment creating the program. See *Avatar Development Corp. v. State*, 723 So.2d 199 (Fla. 1998).

<sup>73</sup> 801 So.2d 1047 (Fla. 1<sup>st</sup> DCA 2001).

of the ICPC. The court denied the appeal and held that the Association's regulations did not apply as they conflicted with the ICPC and the regulations did not apply to the facts of the case.

The court also references language in the ICPC that confers to its compact administrators the "power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact."<sup>74</sup> The court states that "the precise legal effect of the ICPC compact administrators' regulations in Florida is unclear," but noted that it did not need to address the question to decide the case.<sup>75</sup> However, in a footnote, the court provided:

Any regulations promulgated before Florida adopted the ICPC did not, of course, reflect the vote of a Florida compact administrator, and no such regulations were ever themselves enacted into law in Florida. When the Legislature did adopt the ICPC, it did not (and could not) enact as the law of Florida or adopt prospectively regulations then yet to be promulgated by an entity not even covered by the Florida Administrative Procedure Act. See *Freimuth v. State*, 272 So.2d 473, 476 (Fla.1972); *Fla. Indus. Comm'n v. State ex rel. Orange State Oil Co.*, 155 Fla. 772, 21 So.2d 599, 603 (1945) ("[I]t is within the province of the legislature to approve and adopt the provisions of federal statutes, and all of the administrative rules made by a federal administrative body, that are in existence and in effect at the time the legislature acts, but it would be an unconstitutional delegation of legislative power for the legislature to adopt in advance any federal act or the ruling of any federal administrative body that Congress or such administrative body might see fit to adopt in the future."); *Brazil v. Div. of Admin.*, 347 So.2d 755, 757–58 (Fla. 1st DCA 1977), *disapproved on other grounds by LaPointe Outdoor Adver. v. Fla. Dep't of Transp.*, 398 So.2d 1370, 1370 (Fla.1981). The ICPC compact administrators stand on the same footing as federal government administrators in this regard.<sup>76</sup>

In accordance with the discussion provided by the court in this above-cited footnote, it may be argued that the bill's delegation of rule-making authority to the commission is similar to the delegation to the ICPC compact administrators, and thus, could constitute an unlawful delegation of legislative authority. This case, however, does not appear to be binding as precedent as the court's footnote discussion is dicta.<sup>77</sup>

### Public Records and Open Meetings

Provisions in the compact conflict with Florida's public records and open meeting requirements. All or portions of an IMLC Commission meeting may be closed if the topic of the meeting is likely to involve certain matter, such as personnel matters or investigative records. Recordings, minutes, and records generated in such matter are also not publicly available.

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

The Legislature may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) and (b) of the State Constitution. The general law must state with

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<sup>74</sup> *Id* at 1052.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Dicta are statements of a court that are not essential to the determination of the case before it and are not a part of the law of the case. Dicta has no binding legal effect and is without force as judicial precedent. 12A FLA JUR. 2D *Courts and Judges* s. 191 (2015).

specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>78</sup>

**B. RULE-MAKING AUTHORITY:**

The bill authorizes the IMLC Commission to adopt rules to facilitate and coordinate the implementation and administration of the compact. The IMLC specifies that the rules have the force and effect of law and are binding in all party states. If a party state fails to meet its obligations under the IMLC or the promulgated rules, the state may be subject to remedial training, alternative dispute resolution, suspension, termination, or legal action.

The compact details the rule-making process that must be followed including, notice, an opportunity for public participation, and hearings. The compact also provides a procedure for emergency rule-making in cases of imminent danger to public health, safety, or welfare, to prevent financial loss to the state's or commission, or to comply with federal laws or regulations. All rules and amendments are binding on a party state as of the effective date specified.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>78</sup> Art. I, s. 24(c), Fla. Const.  
**STORAGE NAME:** h1143b.HCA  
**DATE:** 2/11/2020