



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

October 29, 2020

Representative Janelle Bynum
900 Court Street NE H284
Salem OR 97301

Re: Multistate Compacts

Dear Representative Bynum:

You asked “who can engage in negotiations to develop a multi-state compact as it relates to mental health licensure and reciprocity. Is this power solely available to the legislature or are other bodies able to negotiate and develop this policy on behalf of the state of Oregon?” The short answer is that, like for other legislation, there is no limit to who can develop and negotiate policy. The power to give legal effect to a multistate compact rests with the Legislative Assembly or with the voters of this state through the initiative process.

Legislative and Initiative Power

Article IV, section 1, of the Oregon Constitution, provides, “The legislative power of the state, except for the initiative and referendum powers reserved to the people, is vested in a Legislative Assembly.”¹ This clause makes it clear that the Legislative Assembly is the only body in the state that is empowered to enact legislation. Article I, section 21, of the Oregon Constitution, provides, “[No law shall] be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution.”² This is known as the nondelegation doctrine, which prohibits the state from delegating the legislative authority to any other body. Thus, only the Legislative Assembly can enact laws for this state and it cannot delegate that power.

However, note the phrase “the initiative and referendum powers reserved to the people.”³ This phrase allows the voters of this state to propose state law through the initiative process.⁴ Like a bill moving through the legislature, an initiative, or ballot measure, can be negotiated and drafted by any person or group of persons. However, rather than being proposed to the Legislative Assembly for enactment into state law, an initiative is proposed to the voters of this state during an election. If the voters vote to pass the ballot measure, the measure becomes law. For example, Ballot Measure 91 (2014) was an initiative that the voters passed to legalize the production, sale and use of recreational marijuana in Oregon. The majority of Ballot Measure 91 is now codified in ORS chapter 475B.

¹ Article IV, section 1 (1), Oregon Constitution.

² Article I, section 21, Oregon Constitution.

³ Article IV, section 1 (1), Oregon Constitution. “The people reserve to themselves the initiative power, which is to propose laws and amendments to the Constitution and enact or reject them at an election independently of the Legislative Assembly.” Article IV, section 1 (2)(a).

⁴ Article IV, section 1 sets out the initiative process.

Multistate Compacts

A multistate compact that allows for reciprocal licensure of health care professionals is similar in its development to any other state law enacted through the legislative process. As you know, often a member of the Legislative Assembly either calls together or is approached by various stakeholders interested in having Oregon join a multistate compact. The group of stakeholders, which may include lobbyists, practitioners of the profession, members of the public, the state regulatory body that regulates the profession, members of the Legislative Assembly and others, can work together towards the decision to join a multistate compact, but in order for a multistate compact to have a legal effect in Oregon, the Legislative Assembly must decide through a vote of the body to enact the compact, as it does other legislative measures.

Alternatively, the group of stakeholders mentioned above can work together to prepare a ballot measure to put forward to the voters. Article IV, section 1, of the Oregon Constitution,⁵ details this process, which includes steps such as collecting voter signatures and filing the initiative and voter signatures with the Secretary of State. If the initiative meets all the deadlines and requirements, it is proposed to the voters at a general or special election for their approval.

The language of a multistate compact that is proposed to the Legislative Assembly for enactment must be largely unchanged from the original compact language. This is to ensure that Oregon is joining the compact under the same terms that other states join the compact. We believe that this holds true for a multistate compact proposed to the voters through the initiative process, as well. Minor form and style changes may be made to a proposed or enacted multistate compact to ensure the compact matches existing Oregon law.

As an example, in 2016 the Legislative Assembly enacted the Physical Therapy Licensure Compact⁶ (PTLC), which exists to “facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services.”⁷ Under the PTLC, a physical therapist licensed in Oregon by the Oregon Board of Physical Therapy may practice physical therapy in another compact state, subject to certain requirements. The PTLC, like most compacts, is model language developed by an interstate organization.⁸ Similar to other legislation, it is likely that the negotiation process involved various stakeholders, but the final decision to join the PTLC rested with the Legislative Assembly.

Conclusion

The policy development and negotiation process for a multistate compact is similar to that for any other state law. However, the power to join a multistate compact and give it the effect of law in Oregon rests either with the Legislative Assembly through the legislative process or with the voters through the initiative process.

Please let us know if we can be of further assistance with this issue.

⁵ See *also* ORS chapter 250.

⁶ ORS 688.240.

⁷ ORS 688.240, Section 1.

⁸ The Federation of State Boards of Physical Therapy developed the PTLC and encourages states to adopt the language so as to become compact states. Federation of State Boards of Physical Therapy, <https://www.fsbpt.org/> (last visited October 24, 2020).

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Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel

A handwritten signature in cursive script that reads "Suzanne Trujillo".

By
Suzanne C. Trujillo
Senior Deputy Legislative Counsel