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MHRA Feedback on the -3 Amendment to HB 4071

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Over the past several years, the Board of Licensed Professional Counselors (BLPCT) has generally heard interest and support from the professional counseling community regarding the adoption of the Counseling Compact in Oregon, which is what the -3 amendment to House Bill 4071 seeks. However, we have identified challenges that render this initiative more complicated than what appears on the surface.

Conflicts with Oregon Constitution

A state that simply enacts statutes to proclaim that it is joining the Counseling Compact does not guarantee it will join the Compact. The Compact's Executive Committee must determine that a state's adopted statutes are *substantively the same* as the Compact Model Legislation. We have identified two constitutional conflicts that will require review. First, the Oregon Constitution prohibits liabilities over $50,000 (Article XI, section 7); however, HB 4071-3, Section 5 inserts the financial liabilities associated with the Compact into the Board's general State Treasury account, allowing such liabilities to potentially extend to all funds within the Board's account. Second, at Section 3, Section 12.I.2., it allows the Counseling Compact Commission to initiate legal action for damages against the State of Oregon, which may not conform with the Oregon Constitution, Article IV, section 24.

Conflicts with Oregon Law

Regarding *statutory* conflicts, the preface to the Model Legislation states: "No substantive changes should be made to the model language. Substantive changes may jeopardize the enacting state's participation in the Compact." Under the Compact, a counselor has a Home State (in which they are based) and may practice in any other member state, called the Remote State. Counselors must comply with the laws of the Remote State where their client is located, rather than the Home State in which the counselor is located (see HB 4071-3 Section 3, Section 7.B. on page 12 lines 5-7). This means that other states would have the ability to investigate Oregon counselors for violating their state laws, and may take adverse action and sanction Oregon counselors' ability to practice under the Compact if they find a violation of their laws or treatment standards (see HB 4071-3, Section 3, Section 7.B. and Section 8.A.1. on page 12, lines 5-7 and 9-13). Other state laws can vary significantly from Oregon laws. Oregon would be required to honor investigatory subpoenas from other member states and disclose confidential investigatory information, including protected health information (see HB 4071-3, Section 3, Section 8.A.2. on page 12, lines 16-21).

MHRA recommends a deliberate and careful review of Compact requirements and existing and proposed Oregon state statutes to avoid conflicts and prevent unforeseen issues that might occur with a hasty adoption. This is complex task, and difficult to accomplish during the short session.

Conflicts with Board Rule

The Counseling Compact is also unforgiving when it comes to conflicts with the Board's Oregon Administrative Rules. It requires states to adhere to any adopted Compact Rule, which the Model Legislation defines as "a regulation promulgated by the Commission that has the force of law" (found in HB 4071-3, Section 3, Section 2.V. on page 5, lines 15-16). While there may be other unforeseen problems yet to be identified, MHRA has identified several conflicts with the Board's educational requirements for licensure as a professional counselor found in OAR 833-030-0011. This includes "grandfathering" provisions for those with less recently conferred master's degrees and reciprocity application provisions that allow for substitution of coursework and experience for duration of licensure in other states, which help streamline the licensing process for counselors coming from other states to apply in Oregon.

Notably, the Board is currently proposing a change that would pose further conflict with Compact requirements via its recently filed Notice of Proposed Rulemaking (February 7, 2024). The Diversity Study presented in December of 2022 by Keen Independent Research recommended that the Board explore removing unnecessary procedural hurdles related licensing that may cause confusion and/or add little or no value. Challenges related to the BLPCT reciprocity application process- the complexity and time to document the education and experience requirements for licensure- have recently resulted in frustrated applicants complaining to legislators and the Governor's Office. The Board's proposal would expand the existing substitution provision to allow three years of active licensure in another state to substitute for all specific coursework and supervised experience requirements. The Oregon Legislature may not wish to unwind BLPCT's progress towards streamlining counselor licensure by reciprocity in order to join the Counseling Compact.

Again, there are significant policy implications here that warrant a thorough review.

Unknown Cost Factor

The early stage of the Counseling Compact introduces various unknown risks to adopting states. As of the date of this writing, the Counseling Commission has not yet began accepting applications for compact privileges from practitioners, and has adopted only three rules that cover rulemaking, definitions, and examination requirements. The Compact makes many references to rules that will be promulgated by the Commission; however, the majority of such rules have not yet been proposed. This includes rules requiring annual assessments and other fees imposed on member states and participating licensees (see HB 4071-3, Section 3, Section 9.F.3.a. on page 19, lines 14-21).

The -3 amendment to HB 4071 is expected to result in significant costs to BLPCT from legal fees, added personnel needs, and necessary systems updates. BLPCT's operations are solely funded by Other Funds which come from licensing fees. Since HB 4071-3 imposes all costs of the State's participation in the Counseling Compact on BLPCT without any General Fund support (see HB 4071-3, Section 5, page 30-31), this is likely to necessitate BLPCT licensing fee

increases, especially considering the workload associated with other pending short session mandates on health boards.

The -3 amendment- which MHRA just learned of- constitutes a significant program and policy changes to be considered during a short session, and with a quick turnaround time to implement by the Board in 91 days following adjournment sine die (mid-June 2024). This is particularly challenging for a smaller agency with fewer resources that was not provided any courtesy advance notice of this proposal. We hope that future endeavors to can be approached more collaboratively.

Again, thank you for allowing us to provide information. Please let me know if you have questions.

Respectfully,

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