Florida’s Participation in the Interstate Medical Licensure Compact Would Require Statutory Changes to Avoid Legal Conflicts

A Presentation to the Senate Committee on Health Policy

Tina Young, Senior Legislative Analyst
Janet Tashner, General Counsel
Overview

1. Background
2. Implications of Compact Membership for Florida
Background
What is the Interstate Medical Licensure Compact (IMLC)?

The compact is an agreement among member states where physicians are licensed by 43 different medical and osteopathic medical boards.

Physicians can apply for multiple medical licenses in member states through the compact’s expedited process.
How Does The Compact Process Differ From The Traditional Licensure Process?

**Traditional Path**
- Physician applies to each state where they wish to practice.
- Each state processes application and conducts a background check.
- Each state awards license after approving physician for licensure.

**Compact Path**
- Physician applies to the IMLC, who contacts the state of principal license (SPL) to conduct a background check and verify eligibility.
- Upon verification of eligibility, physician is awarded a Letter of Qualification (LOQ).
- Physician receives licensure in states where they wish to practice.

Practice of Medicine in Each State
How Do Florida Licensure Requirements Compare to Compact Eligibility Requirements?

<table>
<thead>
<tr>
<th>Licensure Qualification</th>
<th>Florida Licensure Criteria</th>
<th>Compact Eligibility Criteria</th>
</tr>
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<tbody>
<tr>
<td>Graduated from an accredited medical school</td>
<td>✔️</td>
<td>✔️</td>
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<tr>
<td>Passed applicable medical examinations</td>
<td>✔️</td>
<td>✔️</td>
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<tr>
<td>Specialty board certification</td>
<td></td>
<td>✔️</td>
</tr>
<tr>
<td>No history of disciplinary actions</td>
<td>✔️</td>
<td>✔️</td>
</tr>
<tr>
<td>No criminal history</td>
<td>✔️</td>
<td>✔️</td>
</tr>
<tr>
<td>No history of controlled substance actions toward licenses</td>
<td>✔️</td>
<td>✔️</td>
</tr>
<tr>
<td>Not under investigation</td>
<td>✔️</td>
<td>✔️</td>
</tr>
<tr>
<td>Not on U.S. HHS’s List of Excluded Individuals and Entities</td>
<td>✔️</td>
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What Options Exist for Out-of-State Physicians to Practice in Florida?

The majority of physicians who applied to practice medicine in Florida during FY 2018-19 were from out-of-state.

Current Options to Practice in Florida

1. Licensure in Lieu of Examination
   - Full license granted
   - In-person or telemedicine
   - Practice in Florida

2. Telehealth Registration
   - No license granted
   - Telemedicine
   - Practice in Florida

3. License via Compact
   - Full license granted
   - In-person or telemedicine
   - Practice in Florida and any other state(s) where physician holds a license via the compact

The compact would provide another option for these physicians to provide healthcare services in Florida.
What Did Compact Member States Say About Their Experience?

- **Benefits**
  - Increase the supply of physicians (including specialists)
  - Expedited process for issuing licenses

- **Preparation**
  - Training of licensing staff
  - Adjusting internal databases
  - Adjusting fiscal processes to manage collection of fees

- **Legal Issues**
  - Primary legal issue related to the ability to process FBI background checks for physicians

23 Compact states are active members and processing licenses

8 Member boards are in the process of implementation

OPPAGA received info from 15 boards
Implications of Compact Membership for Florida
Compact Member States Retain Control Over Several Licensure-Related Activities

- Determine Eligibility of Compact Applicants
- Issue Licenses to Out-of-State Physicians
- Regulate the Practice of Medicine
- Control License Renewal Standards and Processes
- Retain Control Over Discipline
How Would Florida Compact Membership Affect Discipline (Other than Revocation or Suspension)?

Member States Where Physician is Licensed are Notified

Disciplinary Action (not revocation or suspension)

License via the Compact

License Outside Compact

Member states may choose to
1) Take same action
2) Take their own action
3) Take no action

If State(s) Take Disciplinary Action

Physician can appeal decision(s) in each state that took disciplinary action
How Would Florida Compact Membership Affect License Revocation or Suspension?

**SPL Member State**
- SPL revokes or suspends physician’s license
- All member state licenses held by physician are revoked or suspended (their non-SPL states)
- Physician can appeal the revocation or suspension of their license under each state’s administrative procedure act

**Non-SPL Member State**
- Non-SPL member state revokes or suspends physician’s license
- Physician’s member state license(s) are suspended for 90 days
- Each member state may also revoke or suspend license

**Physician Can Appeal Decision**
- Physician challenges underlying reason in SPL
- Limited due process for physicians in non-SPL states
- Physician can appeal the revocation or suspension of their license under each state’s administrative procedure act
Conflicts Between Compact Provisions and Florida’s General Laws and Constitution
Licensure Qualifications

Conflict

Florida has a licensure requirement with no comparable compact eligibility requirement; however Florida would still have to issue an unencumbered license to compact physicians even if they do not meet this requirement.

- Florida will not issue a license to someone who is on the U.S. Department of Health and Human Services’ List of Excluded Individuals and Entities.

Criminal offenses (covered by compact)

Non-criminal offenses (not covered by compact)

Option

The Legislature could consider repealing one or more of Florida’s licensure provisions that fall outside of the compact’s licensure requirements.

Florida would be required to waive this eligibility criteria and issue a license to the applicant.
Due Process

**Conflict**
While Florida physicians whose SPL is designated in Florida would have full due process rights in Florida, those who designate an SPL other than Florida would have more limited due process rights.

Physicians can **challenge underlying reasons** for suspension or revocation of their medical license **only in their SPL**.

Florida as a compact member state would be required to adopt an SPL revocation or suspension determination without providing the physician with due process in Florida for the underlying reasons for suspension or revocation.

**Option**
The Legislature could consider statutory changes to Ch. 456, *Florida Statutes*, to provide physicians in these circumstances with the opportunity to challenge the underlying reason for revocation or suspension.
Commission Meetings

Conflict

The compact commission may have closed meetings under certain circumstances; this conflicts with Florida’s Constitution and Sunshine Law

- Compact law allows commission members to close a meeting when two-thirds of the commission votes that it would meet certain conditions

Option

The Legislature may consider adopting exemption language similar to that provided to the Nurse Licensure Compact to address conflicts with existing public meetings requirements

- Under the Florida Constitution and Sunshine law, the public is entitled to notice of and access to government meetings as well as to copy and inspect meeting records
Sovereign Immunity

Conflict
Compact bylaws provide the commission with immunity from suit and liability, while Florida allows suit to be brought against the state

By adoption of the compact, Florida would afford the commission immunity and the same limited protections from criminal prosecution and civil suits as the state of Florida affords itself and its employees

Option
The Legislature may consider adding tort limitation language, as they did when joining the Nurse Licensure Compact, clarifying that the compact will pay any claims or judgments arising from commission employees’ employment-related actions in the state
Public Records

**Conflict**
For physicians who designate another state as their SPL, Florida would not have access to physician records, which conflicts with public records laws.

Under the compact, only the state of primary licensure and the commission receive the underlying documents associated with a letter of qualification.

If Florida adopts the compact language, it would be creating a de facto records exemption for those records in the hands of the compact, whereas the records would typically be subject to Florida’s public record laws.

**Options**
1. The Legislature could adopt a statutory exemption protecting these records from public disclosure.
2. The Legislature could require that physicians licensed through the compact provide Florida with copies of all documents provided to the SPL and compact as one of the criteria for practicing medicine in Florida via Ch. 456, *Florida Statutes*.
## Summary of Options to Consider

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<th>Consideration</th>
<th>Option</th>
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<tr>
<td><strong>Infrastructure</strong></td>
<td>Work with the Department of Health to set a compact implementation date to ensure that the department would have adequate time to make required changes to rule, forms, and technological infrastructure in order to process licenses through the compact.</td>
</tr>
<tr>
<td><strong>Licensure Qualifications</strong></td>
<td>Repeal one or more of Florida’s initial licensure provisions that fall outside of the compact’s licensure requirements by amending Ch. 456, F.S.</td>
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<td><strong>Due Process</strong></td>
<td>Enact statutory language providing physicians who practice in Florida and had their license revoked in their state of primary licensure an opportunity to challenge that revocation or suspension in Florida.</td>
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<tr>
<td><strong>Meetings</strong></td>
<td>Enact statutory language providing an exemption allowing closed meetings.</td>
</tr>
<tr>
<td><strong>Sovereign Immunity</strong></td>
<td>Enact statutory language clarifying that the compact pays any claims or judgments arising from the commission’s employment-related actions in the state by amending s. 768.28, F.S.</td>
</tr>
<tr>
<td><strong>Public Records</strong></td>
<td>Enact statutory language providing an exemption allowing records received by the commission as exempt from disclosure. Provide a statutory exemption for application records by amending Ch. 456, F.S.</td>
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Contact Information

Tina Young
Senior Legislative Analyst
(850) 717-0501
young.tina@oppaga.fl.gov

Janet Tashner
General Counsel
(850) 717-0526
tashner.janet@oppaga.fl.gov

Laila Racevskis, Ph.D.
Staff Director, HHS
(850) 717-0524
racevskis.laila@oppaga.fl.gov

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