

ONE HUNDRED SEVENTH LEGISLATURE - SECOND SESSION - 2022
COMMITTEE STATEMENT
LB752

Hearing Date: Wednesday February 02, 2022
Committee On: Health and Human Services
Introducer: Arch
One Liner: Redefine respiratory care under the Respiratory Care Practice Act

Roll Call Vote - Final Committee Action:

Advanced to General File with amendment(s)

Vote Results:

Aye: 7 Senators Arch, Cavanaugh, M., Day, Hansen, B., Murman, Walz, Williams
Nay:
Absent:
Present Not Voting:

Oral Testimony:

Proponents:

Senator John Arch
Heather Nichols
Rachel Shirk

Representing:

District 14
Nebraska Society for Respiratory Care
Children's Hospital and Medical Center; Nebraska Hospital
Association

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB 752 would redefine respiratory care under the Respiratory Care Practice Act.

Under LB 752, new additions to the definition of respiratory care would include:

- The therapeutic and diagnostic management and maintenance use of medical gases, administering apparatus, humidification and aerosols;
- Ventilatory management;
- The insertion of lines, drains, and artificial and nonartificial airways without cutting tissues;
- The administration of all pharmacologic, diagnostic, and therapeutic agents for the treatment and diagnosis of cardiopulmonary disease for which the respiratory care practitioner has been professionally trained or has obtained advance education or certification, including specific testing techniques employed in respiratory care to assist in diagnosis, monitoring, treatment, and research of how specific cardiopulmonary disease affects the patient;
- Management of ventilatory volumes, pressures, and flows;
- Hemodynamic insertion of lines.

Additionally, LB 752 would strike certain language previously included in the definition of respiratory care, including:

- Ventilatory assistance and control;
 - Respiratory rehabilitation;
 - Maintenance of nasal or oral endotracheal tubes;
 - Administration of aerosol and inhalant medications to the cardiorespiratory system and specific testing techniques employed in respiratory care to assist in diagnosis, monitoring, treatment, and research.
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Explanation of amendments:

AM 1918 contains amended provisions of LB 753, LB 554, and LB 15.

LB 753 would require any health care practitioner who performs stem-cell-based therapy to obtain informed written consent from the patient that the patient is aware the treatment has not received Food and Drug Administration (FDA) approval, including for experimental use, and it has been explained by the practitioner.

The bill would not apply to a health care practitioner using stem-cell-based therapeutics or products under investigational approval from the FDA.

Failing to obtain informed written consent could result in disciplinary action against the credential holder.

The Department of Health and Human Services (DHHS) would enforce the new language.

Motion to include LB 753 (as amended) as part of AM 1918.

Vote Results: 7-0-0-0

Voting Aye: Senators Arch, M. Cavanaugh, Day, B. Hansen, Murman, Walz, Williams

Voting Nay: None

Present Not Voting: None

Testifiers on LB 753:

Proponents:

Senator John Arch, District 14

David Crouse, Research!Nebraska

Milissa Johnson-Wiles, Nebraska Attorney General

John Massey, Nebraska Medical Association

Opponents:

None

Neutral:

None

LB 554 would adopt the Licensed Professional Counselors Interstate Compact (LPC-IC). The LPC-IC contains 15 sections.

Section 1 of the LPC-IC contains the objectives of the LPC-IC, and defines the practice of counseling to be where the client is located at the time services are provided. Goals include increasing access, supporting military spouses, allowing for telehealth, and providing opportunity, among others.

Section 2 of the LPC-IC defines terms used throughout the Compact. "Professional Counseling" is defined as the assessment, diagnosis, and treatment of behavioral health conditions by a Licensed Professional Counselor. "Licensed Professional Counselor" is defined as a counselor licensed by a Member State, regardless of the title used by that State, to independently assess, diagnose, and treat behavioral health conditions.

Section 3 of the LPC-IC outlines a state's participation in the LPC-IC. A state must currently license professional counselors, require licensees to pass a nationally recognized exam, have a master's degree in counseling or a graduate

degree including sixty hours in various topics, require licensees to complete supervised postgraduate professional experience as defined by the Commission, and have a mechanism for complaints about licensees. It would also require fingerprinting, and full implementation of a background check requirement. An applicant for a home state license must meet the home state's qualifications for licensure.

Section 4 of the LPC-IC discusses the privilege to practice, using a person's home state license. To use one's home state license to practice in a remote member state, the licensee must have a valid license in the home state, had no restriction on that license or a privilege to practice in the last two years, pay applicable fees, meet continuing competency requirements of the home state and jurisprudence requirements in a remote member state, and report any adverse action taken by a non-member state within 30 days. The privilege to practice is valid until the home state license expires. A licensee using privilege to practice to provide services in a remote state must adhere to laws and regulations of the remote state. It also outlines timeframes for losing the privilege to practice in remote states due to adverse actions against the license by the home state or other remote states.

Section 5 of the LPC-IC outlines the process for obtaining a new home state license based on privilege to practice, such as if the licensee moves from one member state to another. A licensee may only use the privilege to practice in one member state at a time.

Section 6 of the LPC-IC states that active duty military personnel or their spouses designate a home state where the individual has a current license in good standing, and may maintain home state designation for as long as they are on active duty.

Section 7 of the LPC-IC states that member states shall recognize the right to practice Professional Counseling via telehealth, subject to the remote state's laws.

Section 8 of the LPC-IC outlines the process for taking adverse actions, including allowing remote states to take adverse actions against a licensee's privilege to practice in that state.

Section 9 of the LPC-IC establishes the Counseling Compact Commission, and outlines membership, voting, meetings, powers, the executive committee and its duties, financing of the Commission, and qualified immunity, defense, and indemnification. The Commission may levy and collect an annual assessment from member states or impose fees and promulgate rules binding to the member states. Representatives of the Commission would have no greater liability for any damages arising in the scope of their employment than a state employee would have under the same circumstances, except in the case of intentional, willful, or wanton misconduct.

Section 10 of the LPC-IC outlines the LPC-IC data system and information that it must contain. The Commission shall develop and maintain a reporting system that contains licensure, adverse actions, and investigative information on all licensed individuals in all member states.

Section 11 of the LPC-IC outlines the rulemaking process for the Commission, including notice of proposed rulemaking meetings, public hearings, and criteria for adoption of an emergency rule.

Section 12 of the LPC-IC outlines oversight, dispute resolution, and enforcement of the LPC-IC. All courts shall take judicial notice of the LPC-IC and its rules in any judicial or administrative proceeding in a member state. If a state defaults in its obligations under the LPC-IC, the Commission may terminate the state from the Compact. A terminated state is responsible for all assessments, obligations, and liabilities incurred through the effective dates of termination, and responsible for obligations that extend beyond the effective date of termination. The Commission may also bring legal suit against a state.

Section 13 of the LPC-IC states that the Compact does not become effective until 10 states enact the LPC-IC. If a state

withdraws from the LPC-IC by repealing it, it does not take effect until six months after enactment of the repealing statute. No amendment to the LPC-IC shall be binding on any member state until it is enacted into law by all member states.

Section 14 of the LPC-IC allows for severability of provisions, and Section 15 states that licensees must follow the laws and regulations, including scope of practice, of the state in which they are practicing. Any state laws conflicting with the Compact are superseded by the LPC-IC.

LB 554 would also harmonize provisions in state law allowing for the privilege to practice within the state.

Motion to include LB 554 (as amended) as part of AM 1918

Vote results: 7-0-0-0

Voting Aye: Senators Arch, M. Cavanaugh, Day, B. Hansen, Murman, Walz, Williams

Voting Nay: None

Present Not Voting: None

Testifiers on LB 554:

Proponents:

Senator Carol Blood, District 3

Erin Poor, Self

Opponents:

None

Neutral:

None

Submitted Written Testimony on LB 554

Proponents:

Amber Bogle, Children and Family Coalition of Nebraska

Opponents:

None

Neutral:

None

LB 15 would amend the Occupational Therapy Practice Act to adopt the Occupational Therapy Practice Interstate Compact (OTP-IC). The following sections refer to the Articles of the OTP-IC.

The OTP-IC would do the following:

- Outline the purposes and goals of the OTP-IC. (Article 1 (OTP-IC));
- Establish definitions used throughout the OTP-IC. (Article 2 (OTP-IC));
- Home state - state where you reside;
- Member state / Remote state - states in the OTP-IC;
- Compact Privilege - privilege to practice in a member state or remote state;
- Home state licensure - license to practice in your home state;
- Outline the requirements the state must meet to be a member of the OTP-IC, including requiring a criminal background check. (Article 3 (OTP-IC));
- Grant license holders in member states the privilege to practice in another member state. (Article 4 (OTP-IC));
- Delineate how the compact privilege works, including holding an active license in a home state free of encumbrances, with no adverse actions within two years. (Article 4 (OTP-IC));
- Allow a licensee to obtain a new "home state license" by virtue of their compact privilege in their new home

- state. (Article 5 (OTP-IC));
- Allow active-duty military personnel or their spouses to designate a home state where the individual has a current license in good standing so long as they are on active duty. (Article 6 (OTP-IC));
 - Authorize a remote state to take adverse action against a practitioner's compact privilege, but not the underlying home state license. (Article 7 (OTP-IC));
 - Create the Occupational Therapy Compact Commission. (Article 8 (OTP-IC));
 - Provide that liability for members, officers, employees, or representatives of the Commission who act in accordance with the provisions of the compact would have no greater liability than a state employee in the same circumstances. (Article 8 (OTP-IC));
 - Allow the Commission to levy an annual assessment on member states. (Article 8, OTP-IC));
 - Require the Commission to create a database and reporting system containing licensure, adverse actions, and investigative information on all licensed individuals in member states, with the exception of FBI investigation results regarding federal criminal records. (Article 9 (OTP-IC));
 - Establish procedures for rulemaking, and promulgate reasonable rules. (Article 10 (OTP-IC));
 - Authorize the Commission to attempt to resolve disputes related to the compact that arise among member states and between member and non-member states. (Article 11 (OTP-IC));
 - Require provisions of the OTP-IC to become effective once enacted by ten member states, and subsequently require provisions of the compact to become effective the day it is enacted into law once a state enters the OTP-IC. (Article 12 (OTP-IC)); and
 - Provide for the severability of any provision in the compact that is contrary to the constitution of any member state or of the United States or the applicability thereof to any government, agency, person, or circumstance; and provide that if laws conflict between the Compact and state law, state law will be superseded. (Articles 13 and 14 (OTP-IC));

Motion to include LB 15 (as amended) as part of AM 1918

Vote Results: 7-0-0-0

Voting Aye: Senators Arch, M. Cavanaugh, Day, B. Hansen, Murman, Walz, Williams

Voting Nay: None

Present Not Voting: None

Testifiers on LB 15

Proponents:

Senator Carol Blood, District 3

Melissa Kimmerling, Nebraska Occupational Therapy Association

Cheryl Fricke, Nebraska Occupational Therapy Association

Emily Rumery, Nebraska Occupational Therapy Association

Opponents:

None

Neutral:

None

Submitted Written Testimony on LB 15

Proponents:

Matt Schaefer, Madonna Rehabilitation Hospitals

Opponents:

None

Neutral:

Becky Wisell, Department of Health and Human Services

John Arch, Chairperson