New Mexico Nurse Practitioner Council

Advanced Practice Registered Nurse Compact Analysis

Updated August 2023

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Prior to even reviewing the content of this Compact, as a state we should answer the following questions:

- What are the problems the Compact is seeking to solve?
- Are there ways to solve these identified problems with other solutions?
- How will this Compact benefit patients (particularly patients in shortage areas)?
- How will this Compact impact APRNs in New Mexico?

Article I Findings and Declaration of Purpose

Findings

The general comments in the Compact are broad and somewhat insulting to states and boards of nursing that take their authorities and responsibilities quite seriously already. Of course, violation of APRN licensure may result in injury or harm to the public. The Compact does nothing to change that statement. The use of advanced communication technologies as part of the health care delivery system is a serious issue for all health care providers which this Compact affecting only one provider group does not solve. How does the Compact change the fact that new practice modalities and technology makes compliance with state APRN law difficult and complex? It is the job of every board of nursing to assure compliance with laws within their respective states.

Purpose of the Compact

No compact changes the responsibility of each state to protect the public's health and safety. In fact, this Compact could complicate the duty of boards of nursing to know who is in their state practicing and whether they are complying with their state's laws. The efficacy of promoting uniform licensing requirements is totally dependent on what those uniform requirements are. The Compact does not articulate those. Nothing included in the Compact, especially the mutual recognition of each state's laws, actually promotes compliance with the laws governing each state's practice act. The Compact could in fact decrease the number of licenses an APRN must hold, but that alone is not a reason to create a compact with so many other deficiencies.

Article II Definitions

The definition of APRN lacks the definition of specific types of advance practice nurses. Many states' statutes include specific definitions of nurse practitioners (NPs), clinical nurse specialists (CNSs), certified nurse midwives (CNMs) and certified registered nurse anesthetists (CRNAs). States at this point are unlikely to change their statutes to achieve this uniformity. In New Mexico, the Department of Health licenses and regulates CNMs, not the Board of Nursing.

Creating APRN uniform licensure requirements, education and examination requirements could put states in contradiction with the Compact because of their existing statutes.

The definition of multistate licensure privilege says that an APRN practices in a remote state in the same role with the same population focus as their home state. It is not the state that usually determines an APRN's population focus. Instead, national certification, education and competencies dictate the population focus.

Rules will clarify many of these definitions after seven states join the Compact. At this point all rules are unknown.

Article III Provisions and Jurisdiction

The Commission by rule shall adopt the APRN Uniform Licensure Requirements (ULRs). At this point I don't believe these exist in a unified way. Language within the Compact provides an indication of what the ULRs would be. The process outlined for rule development will be used to determine the ULRs. Once the Compact is effective in a state, an APRN must meet the ULRs and the home state's qualification for licensure. What if the home state qualifications for licensure and the party states qualifications are different? The home state and the ULRs rule.

The Commission by rule shall identify the approved APRN roles and population foci for licensure. This may conflict with credentialing and other state laws. Why should this Commission have the authority to determine population foci?

The whole issue of prescriptive authority for APRNs is fraught with politics. The states that have prescriptive authority, have it. The states that don't have prescriptive authority are not going to get it from this legislation because states that oppose independent practice will never pass the Compact. The potential for confusion is great. If an APRN comes from a state without independent prescriptive authority to a state with prescriptive authority and meets all the remote state requirements, the

APRN still holds a non-prescriptive authority license from the home state. How will that work with obtaining DEA numbers and participation in a party state's Prescriptive Monitoring Program (PMP) as we have in New Mexico? How will the remote state check and monitor PMP usage if the remote state does not know the APRN is in the state?

A requirement for physician supervision and/or collaboration in a home or remote state will be eliminated if a state joins the Compact. That will of course conflict with a number of state's laws. The Compact legally supersedes state law once enacted. APRNs may contend with scope of practice acts which have not changed. The potential for conflict is great.

The requirement for a minimum of 2080 practice hours is unnecessary and should not be part of the Compact. APRN education prepares nurses for safe entry into practice after graduating from an accredited graduate program and successfully passing a national certification board examination.

The Compact does not affect additional requirements imposed by states for advance practice. However, how does a remote state even know an APRN under a multistate license is practicing in that state? APRNs licensed in a home state maybe be monitored and mandated to provide evidence of continuing education or a copy of their credentials. Though the mandate exists, how would APRNs file with a state that does not know they are there?

Article IV Applications for APRN Licensure in a Party State

The process of changing a multistate license when an APRN moves from one state to another has the potential to jeopardize the APRNs license in any state. Some states do not allow applying for a license in advance. Because APRNs cannot hold more than one multistate license at a time, they may have to apply for a single state license and then get a new multistate license – more bureaucracy.

Article V Additional Authorities Invested in Party State Licensing Boards

A board issuing subpoenas pays various fees, witness expenses and travel expenses. Cost to the board of nursing is unknown. If a state chooses to use an alternative program (by definition non-disciplinary), the home state must deactivate the multistate licensure privilege. This is not consistent with the definition of a non-disciplinary action. A remote state has the authority to issue a cease-and-desist order or limit the practice of an APRN from another member state. Only the home state can remove the APRN's license. Subpoenas issued by a party state for hearings and

investigations that require attendance, testimony and production of evidence will be enforced in the other state's court. This will require an attorney and cost to present the issue in the other member's appropriate state court, resulting in more unknown costs.

Article VI Coordinated Licensure Information System and Exchange of Information

The first question is who is going to pay for this? A rather sophisticated and expensive data collection system must be created. The Compact mandates that every board of nursing must submit identifying information (on what?); licensure data; alternative program participation information; and any other information required by the Commission. This is an open-ended requirement without any restrictions. The Compact owns this data once it is submitted. Will New Mexico have access to our data? What is the Exchange going to do with the information? What access by a state board of nursing to review cumulative data is available? If state law requires expungement of certain data, how is that assured? The participation of an APRN in an alternative program known to the licensing board must be submitted to the data base even if New Mexico law prohibits its release. The fiscal implication of this is potentially huge.

Article VII Establishment of the Interstate Commission of APRN Compact Administrators

The Compact creates a new joint public agency: the Interstate Commission of APRN Compact Administrators. All lawsuits against the Commission must be in the jurisdiction of the principal office. The Commission has sovereign immunity which means they are immune from civil or criminal prosecution from any of the states and the Compact reinforces that by saying nothing they say in the Compact in any way waives that immunity. The New Mexico Board of Nursing will have one member on the Commission, usually the executive director. Each member has one vote. The Commission will write their own bylaws and all rules. Our Board of Nursing will pay all expenses to travel to meetings which must be at least once a year. The Commission may hold closed meetings generally for appropriate issues (personnel issues, contracts). However, they may hold closed meetings when discussing compliance with the Compact. They may also hold closed meetings on issues exempted by federal or state law.

The Commission will have total power to write any rules within the scope of the Compact's legal authorization and they shall have the force of law in all party states. They also have total power to set budgets, borrow money, lease, purchase equipment,

etc. The Commission may levy and collect an annual assessment from each party state to cover the cost of operations and will develop the formula for this assessment. The fiscal impact on our Board of Nursing and New Mexico's APRNs is unknown.

Article VIII Rulemaking

Commission members shall do all rulemaking. States would publish the proposed rules on their websites at least 60 days in advance. The Commission would hold a public hearing (likely in a faraway location) and accept written comments, but few individuals from New Mexico would be able to travel for in person comments. The Commission will determine the effective date of the rule, not more than 90 days beyond passage. Emergency rules can be adopted to meet an imminent threat to public health and safety (undefined) or to prevent a loss of Commission funds. Rules can only be related to the content of the Compact. There are areas of the Compact that do address scope of practice issues. It is a concern that we would enter the Compact without knowing the extent of the rules. New Mexico would have only one vote on the Commission.

Article IX Oversight, Dispute Resolution and Enforcement

The states must follow all Compact laws and rules. If New Mexico defaulted on our membership by not following the rules or not paying our assessments, the Commission can come after us for owed funds and obligations incurred while New Mexico was a member. Any lawsuit must occur in the District of Columbia or where the Commission has its office. This could result in unknown costs to the Board of Nursing, and they would be liable for expenses.

Article X Effective Date, Withdrawal and Amendment

The Compact goes into effect when seven states' legislatures have passed it. For the state to get out of the Compact we must repeal the statute, but the legal withdrawal is not for six months after the repeal. This is a concern because if our legislature and governor want out of the Compact, it cannot immediately do that. We must continue to comply with the Compact for six months. Any changes to the entire Compact must be passed by the legislatures of all the party states.

Article XI Construction and Severability

If any part of the Compact is ruled unconstitutional by any party state, the rest of the Compact remains intact in that state. The Compact is in full force in the other party states. This is a standard clause in all statutes in all states. The impact would be that if

someone in New Mexico challenged a portion of the law and a New Mexico court ruled that portion was unconstitutional, the rest of the law would remain in effect.

Summary Comments

Whenever a state joins a compact, the state gives its authority to the language of the compact. To be clear, New Mexico has joined many compacts. My research found 43 pages of interstate or intertribal compacts. Many compacts address water, transportation, highways, Native American issues, environment, railways, corrections and so on. The RN Compact is the only compact addressing professional health care providers in New Mexico. At this stage in development, I content that it is premature to go forward with legislation for the APRN Compact in New Mexico. Without knowing what the rules and bylaws will be, we create a huge unknown for practice implications in New Mexico. In addition, we do not know the financial impact of joining the Compact, such as the impact on the cost of NP, CNS or CRNA licenses.