New Mexico Nurse Practitioner Council

Analysis
Advanced Practice Registered Nurse Compact

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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 other solutions to these identified problems?
- How would the Compact impact New Mexico APRNs?
- How would the Compact benefit patients (particularly patients in shortage areas)?

Article I: Findings & Declaration of Purpose

Findings – The general comments here are broad and somewhat insulting to states and boards of nursing that already take their authorities and responsibilities quite seriously. Of course violation of APRN licensure may result in injury or harm to the public. This 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, not just APRNs. The Compact doesn' t address this issue because it affects only one provider group. How does this Compact change the fact that new practice modalities and technology makes compliance with state APRN law difficult and complex? This is the job of every Board of Nursing to assure compliance with laws within their state.

Purpose – 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' re complying with that state' s laws. The efficacy of promoting uniform licensing requirements is totally dependent on what those uniform requirements are. Those are not articulated in the Compact. 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 have specific definitions of NPs, CNSs and CRNAs within their respective statutes. At this point, states are unlikely to change their statutes to achieve this uniformity.

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 in their home state. It is not usually states that make that decision, but the APRN's national certification, education and competencies.

The definition of state practice laws is not quite accurate. Some state practice laws do include requirements on how to obtain and retain an APRN license.

Clarification of many of these definitions will be done by rule after 10 states join the Compact. At this point all rules are unknown.

Article III Provisions and Jurisdiction

The Compact states, "By rule, the Commission [Interstate Commission of APRN Compact Administrators] 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 state qualifications are different?

The Compact further states "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 determine or have the authority with regard to population foci?

The whole issue of prescriptive authority for APRNs is fraught with politics. APRNs already have prescriptive authority in some states, but this legislation won't give prescriptive authority to APRNs in states where they don't already have that authority. The potential for confusion is great. If an APRN comes from a state without 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 the party state's Prescriptive Monitoring Program (PMP)? 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 from a remote state or a home state will be eliminated if a state joins the Compact. That will conflict with a number of states' laws. The Compact legally supersedes state law once the Compact is enacted. APRNs may have to contend with scope of practice acts that have not been changed. The potential for conflict is great.

The Compact does not affect additional requirements imposed by states for advance practice. However, how does a remote state even know whether an APRN is practicing in that state under a multistate license? APRNs licensed in a home state may be monitored and mandated to provide continuing education information or a copy of their credentials. Although a mandate may exist, how would APRNs file with a state that does not know the APRN is 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 APRN's license in any state. Some states do not allow you to apply for a license in advance. Because an APRN cannot hold more than one multistate license at a time, it may require the APRN to apply for a single state license and then get a new multistate license. This creates more bureaucracy, not less.

Article V Additional Authorities Invested in Party State Licensing Boards

A board of nursing issuing subpoenas must pay various fees, witness expenses and travel expenses. Cost to the board 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 and testimony and production of evidence shall 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. This would result in more unknown costs.

Article VI Coordinated Licensure Information System & 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 system?): 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 system 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 database 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

A new joint public agency known as the Interstate Commission of APRN Compact Administrators is created. 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 they are reinforcing that by saying nothing they say in the Compact in any way waives that immunity. New Mexico will have one member on the Commission (usually the BON executive director). Each member has one vote. The Commission will write their own by-laws and all the rules. The NM Board of Nursing will pay all the expenses for 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 also hold closed meetings when discussing compliance with the Compact or 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 the 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. The Commission will develop a formula for this assessment. The fiscal impact on the Board of Nursing and New Mexico APRNs is *unknown*.

Article VIII Rulemaking

The compact states, "Rulemaking shall be done by the Commission members." At least 60 days in advance, states would publish the proposed rules on their websites. A public hearing (in a faraway location) will be held. Written comments will be accepted, 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, which will not be more than 90 days beyond rule 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' s concerning that New Mexico would enter the Compact without knowing the extent of the rules and have only one vote on the Commission.

Article IX Oversight, Dispute Resolution & 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 could come after the state for owed funds and obligations incurred while New Mexico was a member state. Any lawsuit would have to occur in the District of Columbia or wherever the Commission located its office. Because the New Mexico Board of Nursing would be liable for expenses, this could result in additional unknown costs.

Article X Effective Date, Withdrawal and Amendment

The Compact goes into effect when 10 state legislatures have passed it. For the state to get out of the Compact it must repeal the statute, but the actual legal withdrawal doesn't occur until 6 months after the repeal. This is a concern because if our legislature and governor want *out* of the Compact, it cannot be immediate. New Mexico would have to continue to comply with the Compact for 6 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 in New Mexico would be that if for some reason someone here challenged a portion of the law and a NM 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 deal with water, transportation, highways, Native American issues, environment, railways, corrections and so on. The RN Compact is the only one I found addressing professional health care providers. At this stage in development, I content that it's 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. Many people contend this is the gateway to federal licensure. Believe me, the last thing any health care profession should want is the federal government controlling scope of practice. In addition, the financial impact of joining this Compact is unknown. We do not know what the impact will be on the cost of an NP, CNS or CRNA license. I recommend that we wait and see what happens with other states. If 10 states join, in a year or so we'll be able to see the rules and bylaws for further analysis.