

Nurse Licensure Compact Update

Enhanced Nurse Licensure Compact

31 States Enact the Enhanced Nurse Licensure Compact: Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin and Wyoming have enacted the enhanced Nurse Licensure Compact (eNLC). Kansas passed the eNLC with delayed implementation date of July 2019 and Louisiana's date of implementation is yet to be determined. See Board item 6.1 for further information on implementation of the new compact.

<https://www.nursecompact.com/>

The Commission of Interstate Nurse Licensure Compact Administrators

The Interstate Commission of Nurse Licensure Compact Administrators (ICNLCA) is the governing body of the eNLC. They are authorized by law to promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. They are also empowered to adopt bylaws to conduct the operations of the Commission.

<https://www.ncsbn.org/nurse-licensure-compact-administrators.htm>

Federal Trade Commission Report Highlights Nurse Licensure Compact

The FTC released a staff report, *Options to Enhance Occupational License Portability*, that examines ways to reduce the burden on licensed workers moving to new states or wishing to market services across state lines. Specifically, the report examines interstate compacts and model laws states can use to improve the portability of occupational licenses, in addition to procedures that might be adopted to facilitate multistate practice by those who already hold a valid license in one state. The Nurse Licensure Compact is featured in the report. Additionally, the report considers specific initiatives to reduce the burden of state relicensing on military spouses. **(See attachment A)**

<https://www.ncsbn.org/13081.htm>

New Rules

In May 2018, the Commission began consideration of the second set of rules since adoption of the eNLC. Amendments to Compact Rules Section 201. Uniform Data Set and Levels of Access, Section 502. Dispute Resolution and Section 503. Compliance and Reinforcement were approved to publish as proposed rules on May 1, 2018. Proposed rules were published and public comments were received from May 2-July 2, 2018. A public hearing was held on June 29, 2018. The rules were adopted August 14, 2018 and will become effective Jan 1, 2019. All Compact rules adopted or proposed by the Commission can be found at:

<https://www.ncsbn.org/enlcrules.htm>

Resources

NCsbn has organized resources to help Boards of Nursing prepare staff for NLC implementation. Materials cover a wide range of topics and include: online course, factsheets, policy statements, FAQs, toolkits, videos and more.

<https://www.ncsbn.org/nurse-licensure-compact.htm>

APRN Compact

Three states have passed and enacted the APRN Compact: Idaho, North Dakota, and Wyoming. The NCSBN Board of Directors appointed a 2018-2019 APRN Compact Task Force to consider potential changes to promote broader adoption of the Compact.

<https://www.aprncompact.com/>

Texas Compact Statute and Rules

The Texas NLC Statute can be found at:

https://www.bon.texas.gov/laws_and_rules_nursing_practice_act_2017.asp#_Toc498606636

https://www.bon.texas.gov/rr_current/220-1.asp

Policy Perspectives

Options to Enhance Occupational License Portability



Federal Trade Commission
September 2018

FEDERAL TRADE COMMISSION

September 2018

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Maureen K. Ohlhausen	Commissioner
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Rohit Chopra	Commissioner
Rebecca Kelly Slaughter	Commissioner

This policy paper represents the views of the FTC staff, and does not necessarily represent the views of the Commission or any individual Commissioner. The Commission has voted to authorize the staff to issue this policy paper.

Policy Perspectives

Options to Enhance Occupational License Portability

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This Policy Perspective was developed under the auspices of the FTC's Economic Liberty Task Force, convened by former Acting Chairman Maureen K. Ohlhausen.¹

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This Policy Perspective is available online at
www.ftc.gov/policy/reports/policy-reports/commission-and-staff-reports
The online version of this report contains live hyperlinks.

¹ See *infra* p. iv.

About the Economic Liberty Task Force

The [Economic Liberty Task Force](#)² addresses regulatory hurdles to job growth, entrepreneurship, innovation, and competition, with a particular focus on the proliferation of occupational licensing. The Task Force was convened in March 2017 by former Acting Chairman Maureen K. Ohlhausen as her first major policy initiative for the agency. The Task Force builds on the FTC's long history of urging policymakers to reduce or eliminate unnecessary occupational licensing requirements.

Nearly 30 percent of American jobs require a license today, up from less than five percent in the 1950s. For some professions, occupational licensing is necessary to protect the public against legitimate health and safety concerns. But in many situations, the expansion of occupational licensing threatens economic liberty. Unnecessary or overbroad restrictions erect significant barriers and impose costs that harm American workers, employers, consumers, and our economy as a whole, with no measurable benefits to consumers or society. Based on recent studies, the burdens of excessive occupational licensing—especially for entry- and mid-level jobs—may fall disproportionately on our nation's most economically disadvantaged citizens.

To aid in the FTC's analysis of these issues and develop policies for addressing them, the Task Force has hosted a series of public events on issues related to occupational licensing. It has also collaborated with state elected leaders and other officials who share the goal of occupational licensing reform. The FTC's Economic Liberty Task Force looks forward to continuing this work and bringing greater attention to these important issues. Occupational licensing reform is good for competition, workers, consumers, and the American economy.

Economic Liberty Task Force Members

Maureen K. Ohlhausen, Former Acting Chairman; Commissioner

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² See Fed. Trade Comm'n, Economic Liberty: Opening Doors to Opportunity, <https://www.ftc.gov/policy/advocacy/economic-liberty>.

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EXECUTIVE SUMMARY

Occupational licensing, which is almost always state-based, inherently restricts entry into a profession and limits the number of workers available to provide certain services. It may also foreclose employment opportunities for otherwise qualified workers. This reduction in the labor supply can restrain competition, potentially resulting in higher prices, reduced quality, and less convenience for consumers.

For some professions, licensing can nevertheless serve a beneficial role in protecting the health and safety of the public. However, even when state licensure serves a useful role, some aspects of licensure may create significant and unintended negative effects. In our increasingly mobile and interconnected society, state-by-state occupational licensing can pose significant hurdles for individuals who are licensed in one state, but want to market their services across state lines or move to another state. The need to obtain a license in more than one state can reduce interstate mobility and practice, and may even lead licensees to abandon an occupation when moving to another state. These effects fall disproportionately on licensees who are required to move frequently, such as military spouses. The challenges of multistate licensure are also particularly acute for professionals who are more likely to provide services across state lines, such as telehealth or accounting services. The deleterious effects of state-by-state licensing are not borne only by those who wish to provide services in a new state. This thicket of individual state licensing regulations can reduce access to critical services or increase their prices to ordinary consumers.

Recognizing the costs to both consumers and licensees of overly burdensome multistate licensing requirements, the FTC's Economic Liberty Task Force held a Roundtable, *Streamlining Licensing Across State Lines: Initiatives to Enhance Occupational License Portability*, to examine ways to mitigate the negative effects of state-based occupational licensing requirements.³ This *Policy Perspective* builds on the key points that emerged from the Roundtable regarding the development of effective license portability initiatives.

The earliest initiatives to improve license portability were model laws, some of which have been adopted by almost all U.S. jurisdictions. More recently, a number of occupations, primarily in the health professions, have developed interstate compacts authorized by the compact clause of the U.S. Constitution. Unlike model laws, which need not be identical, interstate compacts, as contracts between the states, must be adopted verbatim; thus, they offer great uniformity and

³ See Fed. Trade Comm'n, Streamlining Licensing Across State Lines, Initiatives to Enhance Occupational License Portability (July 27, 2017), <https://www.ftc.gov/news-events/events-calendar/2017/07/streamlining-licensing-across-state-lines-initiatives-enhance>. All of the materials from the Roundtable, including a video of the proceedings, are available on this webpage. A transcript is also available. Fed. Trade Comm'n, Roundtable Transcript, Streamlining Licensing Across State Lines, Initiatives to Enhance Occupational License Portability (July 27, 2017), https://www.ftc.gov/system/files/documents/public_events/1224893/ftc_economic_liberty_roundtable_-_license_portability_transcript.pdf [hereinafter Roundtable Tr.].

stability, but limited flexibility. In addition to model laws or interstate compacts for individual occupations, the U.S. Department of Defense’s State Liaison Office has proposed a number of initiatives to encourage state adoption of measures to improve portability for military spouses in multiple licensed occupations. Regardless of the legal structure of a portability initiative, strong support from within the profession is likely to be critical to nationwide adoption.

Adoption and effectiveness of a licensure portability initiative also depend on how it achieves portability. Model laws and interstate compacts generally rely on either a “mutual recognition” model, in which a multistate license issued by one state affords a privilege to practice in other member states, or a procedure for expedited licensure in each member state. Mutual recognition of a single state license poses a lower barrier to cross-state practice than expedited licensure, and thus could be more effective in enhancing cross-state competition and improving access to services. On the other hand, expedited licensure could ease relocation to another state. A successful portability initiative could be crafted to achieve both goals.

Whether a portability initiative is based on mutual recognition or expedited licensure, supporters can build confidence in an initiative by incorporating coordinated information systems and procedures to ensure that licensees are held accountable for complying with state law wherever they provide services. Harmonizing state licensing standards also builds confidence in the qualifications of those who provide services in a state pursuant to the initiative. By selecting the least restrictive licensing standards that can gain the support of states nationwide, developers of portability initiatives can limit unnecessary restrictions on labor supply and reduce barriers to competition that arise from state licensing.

For occupations that generally require state licensing as a public protection measure, FTC staff encourages stakeholders – such as licensees, professional organizations, organizations of state licensing boards, and state legislatures – to take steps to improve license portability. Each type of portability initiative has advantages and disadvantages, and all take time and effort to develop and implement. However, a thoughtful consideration of the needs of a profession and the consumers it serves is likely to lead to a solution that can gain the support of licensees, licensing boards, the public, and state legislatures. Moreover, by enhancing the ability of licensees to provide services in multiple states, and to become licensed quickly upon relocation, license portability initiatives can benefit consumers by increasing competition, choice, and access to services, especially with respect to licensed professions where qualified providers are in short supply.

I. Introduction

Because states require licensing for more occupations, the percentage of U.S. jobs that require licensure has increased from less than five percent in the 1950s to between 25 and 30 percent today.⁴ This marked shift has made occupational licensing a major component of labor regulation, and has profound implications for competition in the provision of services to consumers.⁵ Thus, the Federal Trade Commission has had a long-standing interest in the competitive effects of occupational licensing.⁶

Although for some professions licensing can serve a beneficial role in protecting the health and safety of the public,⁷ it generally limits the number of workers who can provide certain services. This reduction in the labor supply erects entry barriers in labor markets, which can restrain competition, potentially resulting in higher prices and reduced access to services.⁸ Moreover, while licensing may increase the wages of licensees at the expense of higher prices paid by consumers, studies show that it does not improve quality.⁹

⁴ See, e.g., Morris M. Kleiner & Evgeny Vorotnikov, *Analyzing occupational licensing among the states*, 52 J. REG. ECON. 132 (2017); MORRIS M. KLEINER, THE HAMILTON PROJECT, REFORMING OCCUPATIONAL LICENSING POLICIES 5 (2015), http://www.hamiltonproject.org/assets/legacy/files/downloads_and_links/reforming_occupational_licensing_morris_kleiner_final.pdf.

⁵ See, e.g., Maury Gittleman et al., *Analyzing the Labor Market Outcomes of Occupational Licensing*, 57 INDUS. RELATIONS 57 (2018) (“occupational licensing has become an increasingly important factor in the regulation of services in the United States”).

⁶ See *infra* notes 20-22 and accompanying text.

⁷ Such considerations may be especially important in the health professions, where the risk of harm from an unqualified provider may be considerable and consumers may have difficulty determining whether a provider is qualified. See, e.g., FTC STAFF, POLICY PERSPECTIVES: COMPETITION AND THE REGULATION OF ADVANCED PRACTICE NURSES (“APRNs”) 12-13 (2014), <https://www.ftc.gov/system/files/documents/reports/policy-perspectives-competition-regulation-advanced-practice-nurses/140307aprnpolycypaper.pdf> (describing information asymmetries between professionals and consumers and other reasons supporting the importance of licensure in health care).

⁸ See, e.g., Kleiner & Vorotnikov, *supra* note 4, at 134, 155 (2017) (the restriction in the supply of labor created by occupational licensing has long been known to increase the price of services paid by consumers, which are transferred to licensed workers in the form of higher wages); Morris M. Kleiner et al., *Relaxing Occupational Licensing Requirements: Analyzing Wages and Prices for a Medical Service*, 59 J.L. ECON 261 (2016) (explaining that “occupational licensing may function as a barrier to entry that drives up wages in the licensed profession and increases the price of products and services that are produced by licensed workers”); Gittleman et al, *supra* note 5, at 57 (those with a license earn higher pay and are more likely to be employed).

⁹ See, e.g. KLEINER, *supra* note 4, at 12-13, 15 (a review of studies finds that occupational licensing has little effect on the quality of products or services, but it may function “as if the government were granting a monopoly in the market for the service, with the long-term impacts being lower-quality services, too few providers, and higher prices”); Sean Nicholson & Carol Propper, *Medical Workforce*, in HANDBOOK OF HEALTH ECONOMICS, Vol. 2, ch. 14, 885 (2012) (empirical studies of the effects of licensing in medical labor markets “conclude that licensing is associated with restricted labor supply, an increased wage of the licensed occupation, rents, increased output prices, and no measurable effect on output quality.”).

It is particularly hard to justify licensing-related barriers to entry when a practitioner qualified and licensed by one state wishes to provide identical services in another state. Because licensing rules are almost always state-based,¹⁰ it can be difficult for a qualified person licensed by one state to become licensed in another state. For some occupations, state licensing standards vary considerably, so applicants licensed in one state may need additional education or training to qualify to practice in another state.¹¹ Even when a profession's underlying standards are national and state licensing requirements are similar throughout the United States, the process of obtaining a license in another state is often slow, burdensome, and costly.¹² Indeed, a recent study shows that occupational licensure requirements may substantially limit the interstate mobility of licensed workers, especially for occupations with state-specific licensing requirements.¹³

State-based licensing requirements are particularly burdensome for licensees who provide services in more than one state, and thus need multistate licensing. They are also especially hard on military families, because trailing spouses often follow service members who are required to move across state lines, and therefore must bear the financial and administrative burdens of applying for a license in each new state of residence. The need to obtain a license in another state can sometimes even lead licensees to exit their occupations when they must move to another state.¹⁴

¹⁰ See, e.g., *Dent v. West Virginia*, 129 U.S. 114 (1889) (upholding the right of the state of West Virginia to license physicians); Health Resources & Services Admin., U.S. Dep't of Health & Human Services ("DHHS"), SPECIAL REPORT TO THE SENATE APPROP. COMM., TELEHEALTH LICENSURE REPORT, Requested by Senate Rep't 111-66 (2010) ("For over 100 years, health care in the United States has primarily been regulated by the states. Such regulation includes the establishment of licensure requirements and enforcement standards of practice for health providers, including physicians, nurses, pharmacists, mental health practitioners, etc."); NAT'L CONFERENCE OF STATE LEGISLATURES, THE STATE OF OCCUPATIONAL LICENSING: RESEARCH, STATE POLICIES AND TRENDS 2 (2017), <http://www.ncsl.org/research/labor-and-employment/report-the-state-of-occupational-licensing.aspx> ("An occupational license is a credential that government—most often states—requires a worker to hold in certain occupations.").

¹¹ See, e.g., Roundtable Tr. at 14-15 (Rogers) (although experienced teachers can get a certificate in a new state with little difficulty, inexperienced teachers "have to start literally all over with assessments and course requirements, and it's a very, very frustrating experience"); *id.* at 26 (Rogers) (for teacher certification, "there are so many variations with the states").

¹² See, e.g., DHHS, *supra* note 10, at 9 ("The basic standards for medical and nursing licensure have become largely uniform in all states. Physicians and nurses must graduate from nationally approved educational programs and pass a national medical and nursing licensure examination."); American Medical Association, Medical Licensure ("The process of obtaining a medical license can be challenging and time consuming. . . . Physicians seeking initial licensure or applying for a medical license in another state should anticipate delays due to the investigation of credentials and past practice as well as the need to comply with licensing standards."), <http://www.ama-assn.org/ama/pub/education-careers/becoming-physician/medical-licensure.page>.

¹³ See Janna E. Johnson & Morris M. Kleiner, *Is Occupational Licensing a Barrier to Interstate Migration*, Working Paper 24107, NAT'L BUREAU ECONOMIC RES. (Dec. 2017).

¹⁴ See U.S. Dep't of the Treasury & U.S. Dep't of Defense, Supporting our Military Families: Best Practices for Streamlining Occupational Licensing Across State Lines 6-11 (2012), http://archive.defense.gov/home/pdf/Occupational_Licensing_and_Military_Spouses_Report_vFINAL.PDF.

Multistate licensing requirements can also limit consumers' access to services. For example, licensure requirements can prevent qualified service providers from addressing time-sensitive emergency situations across a nearby state line or block qualified health care providers from providing telehealth services to consumers in rural and underserved locations.¹⁵

Recognizing the costs to both consumers and licensees of multistate licensing requirements, the FTC's Economic Liberty Task Force held a Roundtable, [*Streamlining Licensing Across State Lines: Initiatives to Enhance Occupational License Portability*](#), to examine ways to mitigate the effects of state-based occupational licensing requirements that make it difficult for those licensed by one state to obtain a license in another state and compete across state lines.¹⁶

To assist state licensure boards, professional organizations, state legislatures, and others seeking to improve licensure portability, this *Policy Perspective* builds on the key points that emerged from the Roundtable regarding the development of effective license portability initiatives that can help reduce barriers to entry, enhance competition, and promote economic opportunity. After explaining the interest and experience of the FTC in occupational license portability, the *Policy Perspective* considers: (1) how the importance of license portability to an occupation and consumers affects development and adoption of a portability initiative; (2) the use of interstate compacts and model laws to improve licensure portability; (3) portability procedures—a comparison of mutual recognition of a single state license with expedited licensure in multiple states; (4) the need for harmonization of licensing requirements; (5) disciplinary action across state lines; and (6) license portability for military families.

The *Policy Perspective* also analyzes options in light of their potential competitive effects. FTC staff encourages the use of options that will enhance portability while imposing the fewest restrictions on competition and labor supply, because such restrictions can lead to higher prices, lower quality, and reduced access for consumers, as well as fewer job options for service providers.

¹⁵ See, e.g., *Occupational Licensing: Regulation and Competition: Hearing Before the Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary*, 115th Cong. 1, 8-9 (2017) (statement of Maureen K. Ohlhausen, Acting Chairman, Federal Trade Commission), https://www.ftc.gov/system/files/documents/public_statements/1253073/house_testimony_licensing_and_rbi_act_sept_2017_vote.pdf; KLEINER, *supra* note 4, at 15 ("To the extent that licensing slows both the influx of new workers and greater competition, consumers are not able to take advantage of services at the lowest cost."); Dep't of the Treasury Office of Economic Policy, Council of Economic Advisers, Dep't of Labor, *Occupational Licensing: A Framework for Policymakers* 12-16 (2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf.

¹⁶ See *supra* note 3.

II. Interest and Experience of the Federal Trade Commission

Competition is at the core of America's economy,¹⁷ and vigorous competition among sellers in an open marketplace gives consumers the benefits of lower prices, higher quality products and services, and increased innovation. To this end, the FTC is charged under the FTC Act with preventing unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.¹⁸ In addition, Section 6 of the FTC Act generally authorizes the FTC to investigate and report on market developments "in the public interest" and make recommendations based on those investigations.¹⁹ This authority supports the FTC's research, education, and competition advocacy efforts.

The Commission and its staff have focused on occupational regulations that may unreasonably impede competition for more than thirty years. FTC staff have conducted economic and policy studies on occupational licensing²⁰ and focused inquiries into laws and regulations relating to licensing for various occupations.²¹ Building on this work, in 2017 the FTC formed the Economic Liberty Task Force ("ELTF"), which has examined a broad range of licensing issues, including occupational license portability.²² This *Policy Perspective* arises from the ELTF efforts, especially the 2017 Roundtable, *Streamlining Licensing Across State Lines: Initiatives to Enhance Occupational License Portability*.²³

¹⁷ *Standard Oil Co. v. FTC*, 340 U.S. 231, 248 (1951) ("The heart of our national economic policy long has been faith in the value of competition.").

¹⁸ Federal Trade Commission Act, 15 U.S.C. § 45.

¹⁹ 15 U.S.C. § 46.

²⁰ See, e.g., CAROLYN COX & SUSAN FOSTER, BUREAU OF ECON., FED. TRADE COMM'N, THE COSTS AND BENEFITS OF OCCUPATIONAL REGULATION (1990), http://www.ramblemuse.com/articles/cox_foster.pdf.

²¹ See FTC Staff Comment to the Hon. Laura Ebke, Nebraska State Senator 2 (Jan. 17, 2018), https://www.ftc.gov/system/files/documents/advocacy_documents/federal-trade-commission-staff-comment-nebraska-state-senate-regarding-nebraska-lb299-occupational/v180004_ftc_staff_comment_to_nebraska_state_senate_re_lb_299_jan-18.pdf (referring to FTC advocacy comments on nurses, eye doctors and vendors of optical goods, lawyers and other providers of legal services, dental hygienists, and real estate brokers).

²² See, e.g., *Occupational Licensing: Regulation and Competition: Hearing Before the Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary*, 115th Cong. 1, 3, 6-7 (2017) (statement of Maureen K. Ohlhausen, Acting Chairman, Federal Trade Commission), https://www.ftc.gov/system/files/documents/public_statements/1253073/house_testimony_licensing_and_rbi_act_sept_2017_vote.pdf.

²³ See *supra* note 16 and accompanying text.

III. Importance of License Portability to an Occupation and Consumers

Professional organizations and associations of state licensing boards often spearhead license portability initiatives. If those stakeholders believe interstate mobility is important to the profession, the development and implementation of a successful license portability initiative is more likely to succeed.²⁴ Without such agreement, a portability initiative may stall.²⁵

Agreement on the need for interstate mobility is often driven by changes in technology that allow licensees to provide services to remote customers, and the growth of licensees and firms with a nationwide presence.²⁶ For occupations that depend on interstate mobility, license portability not only benefits licensees who wish to practice across state lines, but also consumers who seek better access to services or expect licensees to provide services nationwide. In such occupations, the need for interstate mobility likely outweighs local concerns, such as minor variations in the qualifications of licensees from different states.

Developing a license portability initiative and obtaining nationwide adoption takes time. Initiatives with broad support often arise from a profession's long-term efforts to streamline licensing.²⁷ For example, the founding policy and governance documents of several organizations of licensing boards have recognized the need for interstate mobility for decades or even a century.²⁸ Perhaps because the need for interstate mobility is integral to these professions,

²⁴ See, e.g., National Council of Architectural Registration Boards ("NCARB"), Comment to the FTC (2017), at 2, https://www.ftc.gov/system/files/documents/public_comments/2017/07/00024-141093.pdf [hereinafter NCARB Comment] (NCARB facilitates license transfer because "[e]ase of mobility is an essential business requirement for an architect and is of paramount importance to the profession."). State programs that ease licensing of many occupations when a military spouse is required to move to a new state have enjoyed widespread support, and have been adopted by states. See Roundtable Tr. at 23 (Beauregard) (DoD found "that states were very accommodating" in finding ways to ease licensure of military spouses).

²⁵ See, e.g., Roundtable Tr. at 16 (K. Thomas) (explaining that states were not adopting the original Nurse Licensure Compact because of a lack of agreement on licensing standards and other matters).

²⁶ See, e.g., Roundtable Tr. at 9 (Masters) (the drivers for licensure portability include advances in technology such as cell phones and computers that facilitate practicing across state lines); Roundtable Tr. at 18 (Webb) (agreement on the need for licensure mobility in the Uniform Accountancy Act arose from "technology [that] was allowing the profession to provide services across state lines from one spot to clients in many states. And the idea that the licensure model that kind of depended heavily on presence in a state might not work so well in the future.").

²⁷ See, e.g., Roundtable Tr. at 17 (Webb) (the mobility effort for certified public accountants ("CPAs"), which began in 1997, was a joint effort of the American Institute of Certified Public Accounts and the National Association of State Boards of Accountancy); *id.* at 19 (Webb) ("we've worked hard for the last 20 years to get this done").

²⁸ See, e.g., Doug McGuirt, *The Professional Engineering Century*, PE MAG. 24, 27 (June 2007) (The National Council of Examiners for Engineering and Surveying ("NCEES") "worked throughout the 1920s to coordinate reciprocal relations among the state licensing boards" and began issuing reciprocal licenses in 1925. NCEES developed a model law establishing uniform licensing guidelines and recordkeeping procedures to improve license portability, and 29 jurisdictions had adopted the model law by 1932). See also *infra* notes 67-69, 77-79 and accompanying text.

their license portability provisions already have been implemented nationwide.²⁹ Moreover, their policies appear to be able to evolve to address changes in practice and technology, to reduce state-based differences in licensing and disciplinary standards, and to reach a consensus on how to streamline procedures. The effectiveness of portability in these professions suggests both that a number of viable models for increased portability exist, and that additional professions can likely benefit from the approaches taken by the professions with greater portability experience.

IV. Legal Structures: Interstate Compacts and Model Laws

Most license portability initiatives for individual occupations have been based on one of two types of legal structures: interstate compacts and model laws. While the legal structure does not dictate whether an initiative improves portability by mutual recognition of a single state license by all member states, or expedited licensure in multiple states,³⁰ it has important effects on the extent to which states can modify the proposed portability initiative both at adoption and in the future.

A. Interstate Compacts

Interstate compacts, which are authorized by the U.S. Constitution, art. I, § 10, cl. 3,³¹ are formal, binding contracts between two or more states that are neither purely state nor purely federal in nature. States acting in their sovereign capacity enter into these contracts by enacting proposed compact legislation.³² States must adopt such proposed legislation verbatim, and all compact states must agree to any modifications. Because compacts cannot be unilaterally amended, they “can provide member states with a predictable, stable, and enforceable mechanism for policy control and implementation.”³³ Because of these characteristics, compacts historically have been used to address matters requiring a long-term, stable solution such as boundary disputes, water rights, and regional transportation systems spanning multiple states.³⁴ There are more than two

²⁹ See *infra* notes 66, 69, 72 and accompanying text.

³⁰ See *infra* note 97 and accompanying text.

³¹ “No state shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State, or with a foreign Power[.]” U.S. Constitution, art. I, § 10, cl. 3. See Roundtable Tr. at 9 (Masters) (“And while that clause seems to say that all compacts require the consent of Congress, the Supreme Court has made it clear that that’s only the case where the compact infringes on some enumerated power that is reserved to the federal government under the US Constitution.”). None of the existing occupational licensure compacts have required the consent of Congress.

³² See MICHAEL L. BUENGER ET AL., THE EVOLVING LAW AND USE OF INTERSTATE COMPACTS xxi, 1, § 2.1.2 (2d ed. 2016).

³³ *Id.* at 26.

³⁴ See *id.* at §§ 1.2.3, 1.3.1.

hundred interstate compacts, but only a few, relatively recent ones address occupational licensing.³⁵

Occupational licensure compacts typically provide procedures that improve license portability among compact jurisdictions, such as mutual recognition or expedited licensure; address licensing standards and procedures; and enhance sharing of applicants' and licensees' records and disciplinary histories among compact states. However, compacts generally do not alter the scope of practice provisions of state practice acts.³⁶

Federal grants to state professional licensing boards specifically encouraged the development and implementation of licensure compacts in the health professions, many of which have relied on the expertise of the National Center for Interstate Compacts of the Council of State Governments to develop a compact.³⁷

Presently, there are licensure compacts for seven occupations, six of which are health professions. Three of the compacts are in operation, carrying out the licensure portability functions specified in the compact legislation. Two compacts are in effect, but are not operational because the administrative structure necessary for implementation is under development. The other two compacts have not been adopted by enough states to go into effect.³⁸

- **Nurse Licensure Compact ("NLC").**³⁹ The NLC, which was the first interstate licensure compact, was initially implemented in 1999 and was substantially revised in 2015.⁴⁰ It was "designed to reduce barriers, to make it easier for nursing to meet the

³⁵ See *id.* at § 9.10; Roundtable Tr. at 9 (Masters); National Center for Interstate Compacts ("NCIC"), Fact Sheet on Interstate Compacts, <http://www.csg.org/knowledgecenter/docs/ncic/FactSheet.pdf>; NCIC Compacts Database, <http://apps.csg.org/ncic/Default.aspx>.

³⁶ See Roundtable Tr. at 10 (Masters) ("The interstate compacts regulating health professions do not impact state practice acts, and are only geared toward the procedure by which professionals can gain occupational licensure across state lines.").

³⁷ See 42 U.S.C. § 254c-18; Office for the Advancement of Telehealth, U.S. Dep't Health & Human Services, Funding Opportunity Announcement HRSA-16-014 (2016); Recognition of EMS Personnel Licensure Interstate Compact ("REPLICA"), <https://www.nremt.org/rwd/public/document/replica> (describing funding for REPLICA from the Dep't of Homeland Security, Office of Health Affairs, and subject matter expertise from the NCIC, Council of State Governments).

³⁸ See, e.g., BUENGER ET AL., *supra* note 32, at §§ 4.6, 7.3.3.7.1 (most interstate compacts specify the number of states that must adopt the compact legislation for the compact to go into effect, while some provide a date certain or are silent on the matter). Once effective, implementation of an occupational licensure compact may require formation of a compact commission, adoption of rules, and development of administrative structures as specified by the legislation. Implementation allows the compact to become operational with respect to the functions set forth in the legislation. See, e.g., *infra* notes 42, 46, 48, 50 and accompanying text.

³⁹ See NURSE LICENSURE COMPACT (May 4, 2015), https://www.ncsbn.org/NLC_Final_050415.pdf.

⁴⁰ See Health Resources & Services Admin., *supra* note 10, at Attachment 1 (NLC first implemented by Maryland on July 1, 1999); BUENGER ET AL., *supra* note 32, at 261, § 9.10.1 (describing revision of the original Nurse Licensure Compact in 2015 after it had been adopted by 25 states); Sandra Evans, *The Nurse Licensure Compact: A Historical Perspective*, 6 J. NURS. REG. 11 (2015).

needs of the health care delivery system and the needs of patients.”⁴¹ The revised NLC, sometimes referred to as the Enhanced Nurse Licensure Compact (“eNLC”), has been adopted by 30 states. It superseded the original NLC and became operational on January 19, 2018.⁴²

- **Interstate Compact on Licensure of Participants in Live Racing with Pari-Mutuel Wagering** (the “National Racing Compact”).⁴³ Fifteen states are members of the National Racing Compact, which is operational and went into effect in 2000.⁴⁴
- **Interstate Medical Licensure Compact** (“IMLC”).⁴⁵ Twenty-four states and one territory have entered into the IMLC, which began expediting licensing of physicians in 2017.⁴⁶
- **The Physical Therapy Licensure Compact** (“PTLC”).⁴⁷ The PTLC, which has been enacted by 21 states, went into effect in April 2017 after adoption by the tenth state, and is expected to go into operation shortly.⁴⁸
- **Recognition of Emergency Medical Services Licensure Interstate Compact** (“REPLICA”).⁴⁹ REPLICA, which has been adopted by 14 states, became effective in May 2017 after adoption by the tenth state.⁵⁰

⁴¹ Roundtable Tr. at 33 (K. Thomas).

⁴² See National Council of State Boards of Nursing, Licensure Compacts, <https://www.ncsbn.org/compacts.htm> (accessed Aug. 3, 2018); The Interstate Commission of Nurse Licensure Compact Administrators (“ICNLCA”), Final Rules § 301 (Dec. 12, 2017), <https://www.ncsbn.org/eNLCFinalRulesadopted121217.pdf> (“The Compact shall be implemented on January 19, 2018.”). Because of the substantial revision of the original NLC, the eNLC set forth in detail the how states would make the transition to the new compact and when the new compact became effective. States that were members of the prior compact were deemed to have withdrawn from it six months after the effective date of the eNLC. See NLC, art. X. sec. a; BUENGER ET AL., *supra* note 32, at 261.

⁴³ INTERSTATE COMPACT ON LICENSURE OF PARTICIPANTS IN LIVE RACING WITH PARI-MUTUEL WAGERING, <http://www.racinglicense.com/modellegislation.html>.

⁴⁴ See National Racing Compact, Participating Jurisdictions (in addition to the 15 members, nine other jurisdictions participate but have not passed legislation to become members of the compact), <http://www.racinglicense.com/accepted.html>; National Racing Compact, About the National Racing Compact: History, <http://www.racinglicense.com/history.html>.

⁴⁵ INTERSTATE MEDICAL LICENSURE COMPACT (Oct. 27, 2015), <https://imlcc.org/wp-content/uploads/2018/04/IMLC-Compact-Law.pdf>.

⁴⁶ See IMLC, <http://www.imlcc.org/> (accessed Aug. 3, 2018); IMLC, FAQs, <https://imlcc.org/faqs/> (accessed Aug. 3, 2018).

⁴⁷ PHYSICAL THERAPY LICENSURE COMPACT (Oct. 2015), http://www.fsbpt.org/Portals/0/documents/free-resources/LicensureCompactLanguage_20170105.pdf.

⁴⁸ See Physical Therapy Licensure Compact, <http://www.fsbpt.org/FreeResources/PhysicalTherapyLicensurecompact.aspx> (accessed June 23, 2018); http://www.fsbpt.org/Portals/0/documents/free-resources/PTLC_Milestones_Updated20160706.pdf (PTLC will become operational after bylaws and rules are finalized).

⁴⁹ RECOGNITION OF EMERGENCY MEDICAL SERVICES LICENSURE INTERSTATE COMPACT (Sept. 2014), <https://content.nremt.org/static/documents/replica/EMS-Personnel-Licensure-Interstate-Compact-model.pdf>.

- **Psychology Interjurisdictional Compact (“PSYPACT”).**⁵¹ PSYPACT has not yet been adopted by enough states to go into effect.⁵²
- **Advanced Practice Registered Nurse Compact (“APRN Compact”).**⁵³ The APRN Compact is not yet in effect.⁵⁴

B. Model Laws and Model Rules

Model laws were among the earliest initiatives to improve license portability. Some have been adopted by almost all states and other U.S. jurisdictions.⁵⁵ They serve many of the same purposes as interstate compacts. As explained by the Uniform Law Commission (“ULC”), one of the purposes of a model law is to promote uniformity, and “[a]n act may be designated as ‘model’ if the act’s principal purposes can be substantially achieved even if the act is not adopted in its entirety by every state.”⁵⁶ The model laws that address occupational license portability have been developed by professional associations and associations of licensing boards, not the ULC.⁵⁷ Although the ULC has not undertaken any projects on occupational licensure portability, a uniform act could be a good vehicle for such an initiative, because uniform acts have the backing of the ULC and are generally more widely adopted than ULC model laws that do not receive such support.⁵⁸

Unlike standalone interstate licensure compacts, occupational license portability provisions in model laws are often only a small part of a model state practice act that covers all aspects of practice, including scope of practice and disciplinary standards.⁵⁹ Addition of portability

⁵⁰ See Recognition of EMS Personnel Licensure Interstate CompAct, <https://www.nremt.org/rwd/public/document/replica> (accessed Aug. 3, 2018) (“The compact administration is now working to implement the law.”).

⁵¹ PSYCHOLOGY INTERJURISDICTIONAL COMPACT (Jan. 2016), https://cdn.ymaws.com/www.asppb.net/resource/resmgr/psypact_docs/Psychology_Interjurisdiction.pdf.

⁵² See Psychology Interjurisdictional Compact, <http://www.asppb.net/page/PSYPACT>.

⁵³ ADVANCED PRACTICE REGISTERED NURSE COMPACT (May 4, 2015), https://www.ncsbn.org/APRN_Compact_Final_050415.pdf.

⁵⁴ See APRN Compact, <https://www.ncsbn.org/aprn-compact.htm>; Roundtable Tr. at 17 (K. Thomas).

⁵⁵ See *infra* notes 64, 69, 72 and accompanying text.

⁵⁶ See Uniform Law Commission, *Statement of Policy Establishing Criteria and Procedures for Designation and Consideration of Uniform and Model Acts* § 2(e), <http://www.uniformlaws.org/Narrative.aspx?title=Criteria%20for%20New%20Projects>.

⁵⁷ Model laws providing for occupational licensure are not in the database of the ULC, which is limited to uniform and model laws drafted by the ULC. See <http://www.uniformlaws.org/Acts.aspx>. There appears to be no centralized database or list of model laws affecting occupational licensing.

⁵⁸ See Bruce H. Kobayashi & Larry E. Ribstein, *The Non-Uniformity of Uniform Laws*, 35 J. CORP. L. 327, 330 (2009) (“fewer states adopt [ULC] proposals that [ULC] does not push for uniform adoption (which [ULC] designates as “model” acts) than proposals that [ULC] urges for uniform adoption”). In addition to developing its own projects, the ULC also considers proposals from outside organizations. See ULC, New Project Proposals, <http://www.uniformlaws.org/Narrative.aspx?title=New Project Proposals>.

⁵⁹ See *infra* notes 63, 70, 76, 81 and accompanying text.

provisions to a practice act may encourage adoption by state legislatures, and also promote adoption of uniform licensing requirements.⁶⁰ In some cases, license portability provisions are included in model rules, rather than model laws, encouraging adoption by state licensing boards without legislative action.⁶¹

The number of model laws that incorporate license portability provisions cannot be readily determined because there is no centralized database of model laws with portability provisions.⁶² In connection with the Roundtable, FTC considered a diverse set of these initiatives. These efforts vary in both the rationale behind their adoption and the procedures they use to achieve greater portability.

In 1998, to eliminate “artificial barriers to the interstate practice and mobility of certified public accountants” arising from differing state requirements for licensing, the American Institute of Certified Public Accountants (“AICPA”) and the National Association of State Boards of Accountancy (“NASBA”) added provisions to enhance interstate mobility to the Uniform Accountancy Act (“UAA”).⁶³ These provisions, which are based on the substantial equivalency of state licensing standards for individuals, have been adopted by 55 jurisdictions, including 50 states, the District of Columbia, and four U.S. territories.⁶⁴ The high level of adoption reflects technological advances that have allowed accountants to provide services across state lines electronically, as well as sustained support from the AICPA and NASBA.⁶⁵ In 2014, building on the popularity of the individual mobility initiative, the two organizations added provisions for firm license mobility to the UAA; these have been adopted by 21 states.⁶⁶

For older license portability initiatives, a model law or rule may be secondary to streamlining procedures arising from a professional organization’s governance documents, policies, or programs. For example, the National Association of Boards of Pharmacy (“NABP”) was founded

⁶⁰ See AICPA – NASBA, UNIFORM ACCOUNTANCY ACT I-1-2 (2018) [hereinafter UAA] (describing how a 1916 model bill to regulate the practice of public accountancy became the 1984 predecessor to the UAA, to which mobility provisions were added in 1997). See also Roundtable Tr. at 17-18 (Webb) (“the UAA was the vehicle for moving this mobility effort”); *id.* at 28 (Webb) (“[W]e already had a model or a uniform act that was being promoted. And the idea, one of the goals is to promote uniformity. The availability of the practice privilege if your state adopts the uniform standards for licensure is a way to move the whole process.”). See also *infra* notes 70-81 and accompanying text.

⁶¹ See *infra* notes 74-76 and accompanying text. Alternatively, model rules may provide details on portability that were not set forth in the model law’s portability provision. See NASBA, UNIFORM ACCOUNTANCY ACT MODEL RULES, art. 6, Rule 9; art. 23 (2018) (Interstate practice, Substantial Equivalency).

⁶² See *supra* note 57.

⁶³ UAA, *supra* note 60, at I-2. While “Uniform” is in its title, the UAA is not a uniform act drafted by the ULC.

⁶⁴ See *id.*; *id.* at I-8, ¶ 3; *id.* at sec. 23; Roundtable Tr. at 19 (Webb) (see also presentation materials).

⁶⁵ See *supra* notes 26 and 27.

⁶⁶ See Roundtable Tr. at 19 (Webb) (firm mobility provisions have been adopted by 21 jurisdictions; see also presentation materials); AICPA, *CPA Firm Mobility* (June 19, 2018) <https://www.aicpa.org/advocacy/state/cpafirmmobility.html> (addition of firm mobility provisions in 2014).

in 1904 “around building a license transfer process for pharmacist licensure.”⁶⁷ Indeed, Article II of the *NABP Constitution* states that the “purpose of the Association is to provide for the interstate transfer in pharmacist licensure[.]”⁶⁸ Since the *NABP Constitution and Bylaws* require members to participate in the NABP Electronic Licensure Transfer Program, all jurisdictions have implemented NABP’s portability program.⁶⁹ The license transfer provisions are also set forth in the *Model State Pharmacy Act and Model Rules of the National Association of Boards of Pharmacy*.⁷⁰

Similarly, in the 1920s, the National Council of Examiners for Engineering and Surveying (“NCEES”) began programs to facilitate reciprocal recognition of the licenses of engineers and surveyors in member states.⁷¹ These efforts, and a centralized recordkeeping service established in 1932,⁷² led to NCEES’ current “Model Law” programs for expedited licensure by comity of professionals who meet certain requirements.⁷³ The expedited comity provisions for “Model Law Engineers,” “Model Law Surveyors,” and “Model Law Structural Engineers” are set forth in

⁶⁷ National Association of Boards of Pharmacy (“NABP”), Comment to the FTC (2017), at 1-2, https://www.ftc.gov/system/files/documents/public_comments/2017/07/00016-141084.pdf [hereinafter NABP Comment].

⁶⁸ NABP, Constitution and Bylaws (2017), <https://nabp.pharmacy/wp-content/uploads/2016/06/Constitution-Bylaws-2017.pdf> (Constitution, art. II).

⁶⁹ See NABP Comment, *supra* note 67, at 2 (“As required by the *NABP Constitution and Bylaws*, all NABP members participate in e-LTP and the NABP Clearinghouse.”); NABP Bylaws, art. II (“Active member boards shall utilize the NABP Clearinghouse to process requests for the transfer of examination scores and licenses . . .”). While all states participate in the Electronic Licensure Transfer Program, some have additional requirements such as a jurisprudence examination or maintenance of the license of original examination as a basis for transfer). See NABP, Licensure Transfer, <https://nabp.pharmacy/programs/licensure-transfer/>.

⁷⁰ See NABP, Model State Pharmacy Act and Model Rules of the National Association of Boards of Pharmacy (2017), <https://nabp.pharmacy/wp-content/uploads/2017/11/NABP-Model-Act-2017.docx> (Model Act sec. 303, Qualifications for Licensure Transfer); NABP Comment, *supra* note 67, at 2.

⁷¹ See McGuirt, *supra* note 28, at 24, 27 (during the 1920s NCEES worked to coordinate reciprocal relations among state licensing boards, leading to the use of “reciprocal cards” accepted by all member states in 1925).

⁷² See *id.* at 29; Craig N. Musselman et al., *Licensure Issues of Strategic Importance to the Civil Engineering Profession – and ASCE*, PROC. AM. SOC. ENGINEERING EDUC. ANN. CONF. 8 (2016), <https://www.asee.org/public/conferences/64/papers/14392/download> (“The Council Record Program provides a very significant benefit to engineers who practice in multiple jurisdictions in that, if the individual is deemed a “Model Law Engineer,” expedited comity is provided in most, not all, jurisdictions.”).

⁷³ See NCEES, Model Law designation, <http://ncees.org/records/model-law-designation/>.

NCEES' Model Rules⁷⁴ and Manual of Policy and Position Statements;⁷⁵ it is anticipated that these provisions will be added to NCEES' Model Law in 2020.⁷⁶

In the field of architecture, reciprocal licensing goes back to the 1919 charter of the National Council of Architectural Registration Boards ("NCARB").⁷⁷ Under the charter, a core part of NCARB's mission is "to foster consistent rules and regulations that facilitate interstate practice."⁷⁸ The NCARB Certificate, a credential for architects who meet certain education, examination, and experience requirements, was first offered in 1937 and is now the primary vehicle for multistate practice.⁷⁹ The certificate alone is sufficient to allow reciprocal licensing in about half the states, while most other Boards consider it as a factor for expedited licensing.⁸⁰ Requirements for certification are set forth in NCARB's model law and model regulations for the practice of architecture, which also encourage adoption of consistent licensing requirements and provide for acceptance of the NCARB Certificate by member states.⁸¹

C. Modifying Interstate Compacts and Model Laws

An important difference between model laws and interstate licensure compacts is that the former need not be identical, while the latter, as contracts between the states, must be adopted verbatim.⁸² While the core features of model laws are typically the same, they can accommodate

⁷⁴ NCEES, Model Rules §§ 210.20(B), 230.60(F) (2015), <https://ncees.org/wp-content/uploads/ModelRules-2017.pdf>.

⁷⁵ NCEES, Manual of Policy and Position Statements, Professional Policies 5 & 6, and Position Statement 17 (2016), <https://ncees.org/wp-content/uploads/Policy-manual-2017.pdf>.

⁷⁶ See NCEES Model Law, https://ncees.org/wp-content/uploads/Model_Law_2017.pdf; Craig N. Musselman et al., *A Primer on Engineering Licensure in the United States*, Sec. 4, PROC. AM. SOC. ENGINEERING EDUC. ANN. CONF. (2011).

⁷⁷ See NCARB Comment, *supra* note 24, at 1 ("NCARB was formed in 1919 with the specific goal of facilitating reciprocal licensing clearly articulated in its charter.").

⁷⁸ *Id.* at 1, 4.

⁷⁹ See NCARB Comment, *supra* note 24, at 2, 4; NCARB Certificate, <https://www.ncarb.org/advance-your-career/ncarb-certificate>.

⁸⁰ See NCARB Comment, *supra* note 24, at 4.

⁸¹ See *id.*; see also NCARB, Legislative Guidelines and Model Law, Model Regulations (2016-2017), https://www.ncarb.org/sites/default/files/Legislative_Guidelines.pdf (Legislative Guideline IV, Qualification for Registration under Reciprocity Procedure; Model Law sec. 3, Registration Qualifications; Model Regulations, § 100.501, Registration of NCARB Certificate Holders).

⁸² See BUENGER ET AL., *supra* note 32, at 37 ("While compacts have many of the characteristics of uniform and model laws, in contrast to compacts, states are not required to enact uniform laws or model acts verbatim. . . . [therefore] uniform and model acts do not constitute a contract between the states even if adopted by all states in the same form."). Cf. Roundtable Tr. at 36 (Masters) ("The unique thing about compacts is that the language, because it's contractual, has to be substantially similar. And so unlike other types of legislation, legislators aren't free to just amend the statute . . ."). See also UAA, *supra* note 60, at I-3 ("Whether the UAA is considered for adoption wholly or only in part, adjustments may also be appropriate in light of other laws in effect in the particular state in question.").

not only variations between states, but also incremental changes to meet changing needs.⁸³ Some organizations of state licensing boards and professional organizations propose such changes periodically, leading to nationwide evolution of a model law over time.⁸⁴ In other cases, such changes have been achieved through the use of model rules adopted by state licensing boards.⁸⁵

Since changes in interstate compacts must be adopted by all member jurisdictions to be effective, changing an interstate licensure compact can be difficult; it may require the adoption of an entirely new compact, as was the case with the NLC.⁸⁶ Accordingly, once enacted, compacts “may be static for long periods of time.”⁸⁷ Indeed, a recognized cost of uniformity via compact is impeding evolution of state law.⁸⁸

This problem can sometimes be avoided. If an interstate licensure compact provides for a compact commission with the power to promulgate rules with the force and effect of state law, changes can be made much more rapidly, without the involvement of state legislatures.⁸⁹ But while compact commissions may have the power to make binding changes equivalent to state law expeditiously, this can be controversial because commission rules may override contrary

⁸³ Craig N. Musselman et al., *A Primer on Engineering Licensure in the United States*, sec. 2, PROC. AM. SOC. ENGINEERING EDUC. ANN. CONF. (2011) (no state statute or rule is identical to the NCEES model law or rule, but states “have made significant efforts to assure that their statute and rules are reasonably consistent with the Model Law and Model Rules such that duly qualified professional engineers who are residents in that state will be able to be licensed in other states.”).

⁸⁴ See, e.g., UAA, *supra* note 60, at I-3 (“Beginning with the 1992 edition, the Uniform Accountancy Act has been designed as an ‘evergreen’ document.”); UAA, letter to interested parties, at 1 (“To keep the UAA ‘evergreen,’ a continuous process of refreshing the document is necessary.”).

⁸⁵ See NABP Comment, *supra* note 67, at 3 (explaining that changes at the state level often occur via the regulatory process because state boards can move expeditiously, without waiting for a state legislature to convene); Federation of Associations of Regulatory Boards (“FARB”), Comment to the FTC (2017), at 2, https://www.ftc.gov/system/files/documents/public_comments/2017/07/00015-141083.pdf (regulatory boards can efficiently promulgate relevant rules and regulations). While the ability to modify a model law may improve consistency or accommodate differing needs of states, it can also reduce uniformity, contrary to the purpose of the model law. See BUENGER ET AL., *supra* note 32, at § 2.1.1.

⁸⁶ See Roundtable Tr. at 29 (K. Thomas) (describing the difficulty of getting all member jurisdictions to adopt a change to the NLC, leading to a decision to develop a new compact with a commission with rulemaking authority); BUENGER ET AL., *supra* note 32, at 261 (describing provisions in the 2015 revision of the NLC for the transition from the original version); FARB, *supra* note 85, at 3 (“The effectiveness of such arrangements is limited by the fact that every state must enact verbatim legislation . . .”).

⁸⁷ BUENGER ET AL., *supra* note 32, at 27.

⁸⁸ See, e.g., Larry E. Ribstein & Bruce H. Kobayashi, *Uniform Laws, Model Laws and Limited Liability Companies*, 66 U. COLO. L. REV. 947, 949 (1995) (“[U]niformity may impose costs, such as impeding evolution of state law. These costs are likely to outweigh the benefits of uniformity for laws for which interstate variation does not impose excessive information or compliance costs.”).

⁸⁹ See NLC, art. VII, sec. g(1) (giving the compact commission the power to promulgate uniform rules with the force and effect of law, binding on all party states); BUENGER ET AL., *supra* note 32, at § 9.10.1 (the NLC’s compact commission has “the authority to make uniform rules, but makes it more efficient by allowing the rules to become effective without a duplicative requirement that each state adopt the uniform rules in addition to adoption by the compact governing body.”).

state laws adopted by elected legislatures.⁹⁰ Nonetheless, to provide some flexibility, recent interstate compacts addressing occupational licensing have provided for a compact commission with the power to promulgate rules with the force and effect of state law.⁹¹

D. Achieving Nationwide Licensure Portability: Comparison of Interstate Compacts and Model Laws

License portability can be achieved either with a model law or with an interstate compact. Model laws have a longer track record, and some have been adopted or implemented by nearly all states.⁹² Interstate licensure compacts also hold considerable promise for improving interstate license portability and streamlining multistate practice, but whether states will adopt them nationwide remains to be seen.

Experts on compacts acknowledge that “it is difficult to get state legislatures to adopt compacts because of the strict requirement of substantive sameness between all member states and the tendency of parochial interests to trump consideration for interstate cooperation.”⁹³ Achieving nationwide adoption, however, is difficult even when the requirement of uniformity is less strict.⁹⁴

Whether a portability initiative is based on a compact or a model law, strong support from its developers and licensees likely is critical to achieving nationwide adoption.⁹⁵ Without widespread agreement, supporters of interstate licensing initiatives need a deep understanding of the objections of those who are opposed, so that they can attempt to address their concerns and increase support for the portability initiative.⁹⁶ In addition, the extent to which an initiative is

⁹⁰ See BUENGER ET AL., *supra* note 32, at 50-51 (explaining that a compact may provide that rules promulgated by its commission have the force and effect of statutory law and are binding on member states unless a majority of the states’ legislatures reject the rule); Roundtable Tr. at 28 (Masters) (compact commission rulemaking is controversial when states see it as a surrender of sovereignty; thus, it is necessary to make clear to legislators that the rulemaking covers portability initiative procedures, not the substance of a state practice act); *id.* at 31 (J. Thomas). (“There’s concern that this commission is going to draft laws and do something to take over the practice of medicine. It really just governs the process.”).

⁹¹ See APRN COMPACT, art. VII, sec. g(1); IMLC sec. 2(m); PTLC, sec. 7(C)(5); PSYPACT, art. II, sec. W; REPLICA, sec. 2(O). A compact commission is also considered essential to effective administration of a compact. See, e.g., Roundtable Tr. at 34 (J. Thomas), *id.* at 34 (K. Thomas).

⁹² See *supra* Sec. IV.B.

⁹³ BUENGER ET AL., *supra* note 32, at 27.

⁹⁴ For example, one study found that, on average, uniform laws developed by the ULC have been adopted by only 20 jurisdictions out of 53. See Larry E. Ribstein & Bruce H. Kobayashi, *An Economic Analysis of Uniform State Laws*, 25 J. LEGAL STUD. 131, 135 (1996).

⁹⁵ See *supra* Sec. III. See also Kobayashi & Ribstein, *supra* note 58, at 330; Ribstein & Kobayashi, *supra* note 94, at 131, 182, 187.

⁹⁶ See Roundtable Tr. at 35 (K. Thomas) (it is important “to know who your supporters are and know who may be working against you, and try to resolve issues”).

adopted and effective may turn as much on an initiative's procedures for achieving portability and the consistency of state licensing requirements, as the overall legal structure of the initiative.

V. Portability Procedures: Mutual Recognition and Expedited Licensure

Multistate portability initiatives have used two procedures to improve portability: "mutual recognition" and expedited licensure. Under a mutual recognition model, licensees only need one state license (a multistate license), which gives them a privilege to practice in other states that have entered into the initiative. By contrast, initiatives based on expedited licensure require application for a license in each intended state of practice, but make the process more efficient than it otherwise would be. Both model laws and interstate licensure compacts have employed these two approaches.⁹⁷

A. Mutual Recognition

Mutual recognition by all member states of multistate licenses issued by any member of the initiative is a simple, efficient approach for multistate practice. Applicants who meet certain criteria⁹⁸ need apply for only a single state license; in general, no additional fees, paperwork, or review are required.⁹⁹ Mutual recognition initiatives may also allow licensees to exercise a

⁹⁷ Interstate licensure compacts that rely on a mutual recognition model include: the NLC (*see* Roundtable Tr. at 15 (K. Thomas)); the APRN COMPACT (*see id.* at 17 (K. Thomas)); PTLC (*see* PTLC secs. 2(4)), 4; REPLICA (sec. 4); and PSYPACT (art. IV (telepsychology), art. V (temporary practice)). The UAA is an example of a model law portability initiative that uses a mutual recognition model (privilege to practice). *See* Roundtable Tr. at 18-19 (Webb). The IMLC is an example of a compact that uses an expedited licensure process. *See* Roundtable Tr. at 11 (J. Thomas). Examples of model law portability initiatives that use expedited licensure include the NABP, *supra* note 70 (Model Act sec. 303 (license transfer is a process whereby a licensed pharmacist obtains a license in another state)), NABP, *supra* note 67 ("the license transfer process is expedited"); NCEES, *supra* note 74 and accompanying text; and NCARB, *supra* notes 79-80 and accompanying text. The National Racing Compact ("NRC") is unlike other initiatives in that its compact committee, rather than a state, issues licenses ("national licenses") that are recognized by other compact states and may be recognized by noncompact states. *See* NRC, Model Legislation, sec. 7(3), sec. 11(A)(1) (2014), <http://www.racinglicense.com/modellegislation.html>; NRC, History, <http://www.racinglicense.com/history.html>.

⁹⁸ For example, nurses must qualify for a multistate license to practice across state lines under the NLC. *See* Roundtable Tr. at 16 (K. Thomas) (Under the NLC, "to have a multistate license, you have to meet these uniform requirements. And we're talking about pretty basic things like passing a national licensure exam, the NCLEX, and having a social security number, having an FBI criminal background check."). Alternatively, states may not have separate licenses for single and multistate practice, allowing licensees to exercise a privilege to practice in other states on the basis of substantial equivalency of the state's licensure requirements or the individual's qualifications based on criteria established by the portability initiative. *See* UAA, *supra* note 60, at sec. 23(a)(1), (2). A variation on this approach is requiring applicants seeking authorization for multistate practice to meet criteria for a certificate issued by an association of licensing boards or other relevant organization; the certificate provides a privilege to practice in other compact jurisdictions. *See* PSYPACT, arts. II, secs. L, Q, IV sec. B(6), V sec. B(6).

⁹⁹ None of the mutual recognition initiatives discussed in note 97 require additional paperwork for multistate practice except for the PTLC. Although the PTLC does not require licensure in every state of practice, it requires licensees to notify the compact commission of their intent to practice in another state; the commission then grants a compact privilege to the licensee upon payment of applicable fees. *See* PTLC secs. 3(C), (D), 4(A)(5), (6).

privilege to practice without notice to other member states, because the legislation ensures that licensees are automatically considered to be within each state's jurisdiction for purposes of disciplinary authority.¹⁰⁰ The ease of multistate practice under a mutual recognition model may explain why it is favored by a number of professions that frequently use telework and electronic communications, or require emergency movements across state lines.¹⁰¹

While a mutual recognition model provides an efficient mechanism for practicing in multiple states without obtaining multiple licenses, licensees typically must apply for a new license when they move to another state or establish a principal place of business in another state.¹⁰² Initiatives address this issue in different ways, and the extent of streamlining varies. The UAA provides for reciprocity and routine issuance of a new license for CPAs who apply for a license in a new state of principal place of business if they personally possess qualifications that are substantially equivalent to the Act's licensure provisions.¹⁰³ On the other hand, under the NLC, licensees moving from one member state to another must rely on each state's endorsement or other procedures for licensing of out-of-state applicants.¹⁰⁴ The NLC, however, eliminates the period

¹⁰⁰ See, e.g., Roundtable Tr. at 25 (Webb) (notice is not necessary under the UAA because it is a complaint-based system); UAA, *supra* note 60, at I-9, ¶ 9 (UAA provides “a no notice, no fee, and no escape approach for granting practice privileges across state lines for CPAs and CPA firms from states meeting UAA standards as well as for CPAs who individually meet UAA standards”), *id.* at sec. 23(a)(3) (licensees exercising the privilege to practice in another state are under the disciplinary authority of that state's Board); Roundtable Tr. at 25 (K. Thomas) (tracking practitioners was unrealistic, and unnecessary because the compact is notified about complaints immediately); *but see id.* at 25 (Masters) (the PTLC has provisions to notify each state when a licensee is practicing in it); *supra* note 99 (discussion of PTLC). See also *infra* notes 112, 123 and accompanying text (discussion of coordination of enforcement and disciplinary actions).

¹⁰¹ See Roundtable Tr. at 18 (Webb) (discussing the UAA); *id.* at 15 (K. Thomas) (NLC arose from “changes in health care delivery including telehealth technologies . . . and nurses having a need to practice in multiple states from one central location”); *id.* at 16 (K. Thomas) (APRNs who provide mental health services often use telecommunications to provide services in rural areas across state lines); PSYPACT, art. I (the purpose of PSYPACT is to regulate the practice of telepsychology and temporary in-person services across state lines), art. IV (setting for the “Compact Privilege to Practice Telepsychology”); REPLICA sec. 1 (“This Compact is intended to facilitate the day to day movement of EMS personnel across state boundaries in the performance of their EMS duties”).

¹⁰² See, e.g., NLC art. IV, sec. c (“If a nurse changes primary state of residence by moving between two party states, the nurse must apply for licensure in the new home state, and the multistate license issued by the prior state will be deactivated . . .”).

¹⁰³ See Roundtable Tr. at 19 (Webb) (“the UAA was changed to allow for expedited reciprocity if you personally had qualifications that matched those of the [UAA]”); UAA, *supra* note 60, at sec. 6(c)(2) (comment: . . . “With substantial equivalency established, however, this application process for an individual would essentially be routine and just a matter of filing an application and paying an appropriate fee.”).

¹⁰⁴ See U.S. Dep't of the Treasury & U.S. Dep't of Defense, *supra* note 14, at 12-13 (nurses moving across state lines must apply for licensure by endorsement and pay any applicable fees; “[a]lthough the NLC and NURSUS provide some standardization to the licensure by endorsement process, they do not ensure straightforward license portability for nurses moving across state lines and do not eliminate many of the non-uniform aspects of the application process[.]”). State endorsement processes can reduce the burden of obtaining a license and enhance competition. See, e.g., Comment from FTC staff to the New York State Education Department (April 6, 2018), <https://www.ftc.gov/policy/advocacy/advocacy-filings/2018/04/ftc-staff-comment-new-yorks-proposal-allow-licensure> (supporting a proposed amendment that would permit experienced, licensed Canadian dentists to use the

when a nurse might be unlicensed and unable to work by allowing licensees to practice under the existing multistate license during processing of the application by the new state of residence.¹⁰⁵

B. Expedited Licensure

Under an expedited licensure model, multistate practice is a multistep process in which applicants must obtain a license in each intended state of practice. Typically, the process begins when applicants provide their credentials to a central repository for storage and transfer. Repository officials or officials from the principal state of licensing then determine whether an applicant qualifies for expedited treatment.¹⁰⁶ If deemed qualified, applicants receive expedited treatment in other member jurisdictions. Although the process involves multiple steps, the use of centralized databases and processes for confirming an applicant's qualifications may reduce paperwork and review time, especially after the initial determination of qualification.¹⁰⁷ Fees, however, may be higher, because payments to each state board and a central administrative body may be required.¹⁰⁸ Although multistate practice under an expedited licensure model generally involves more paperwork than a mutual recognition model, expedited licensure procedures may facilitate a move to another state.¹⁰⁹

same endorsement procedures that practicing dentists in other U.S. states follow to become licensed in New York State).

¹⁰⁵ See, e.g., NLC art. IV, sec. c(1) ("The nurse may apply for licensure in advance of a change in primary state of residence"); Roundtable Tr. at 23 (K. Thomas) (under the NLC, applicants may receive a temporary license while their application for licensure in a new home state is being processed); See ICNLCA, Final Rules sec. 403(1) (Dec. 12, 2017) ("A nurse who changes his or her primary state of residence from one party state to another party state may continue to practice under the existing multistate license while the nurse's application is processed and a multistate license is issued in the new primary state of residence.").

¹⁰⁶ For some professions, the determination of qualification for expedited licensure is made by a central organization. See, e.g., NCARB, *supra* note 79 and accompanying text; NCEES, *supra* note 73 and accompanying text. IMLC's expedited process is based on a letter of qualification issued by the state of principal licensure. See Roundtable Tr. at 11 (J. Thomas). Initiatives that use mutual recognition models also use central databases to facilitate handling of credentials, but access is unnecessary for multistate practice. See, e.g., Roundtable Tr. at 26 (K. Thomas) (describing the database administered by the National Council of State Boards of Nursing); NLC, art. VI (requiring party states to participate in a coordinated licensure information system that includes information on licensure and disciplinary history).

¹⁰⁷ See, e.g., Roundtable Tr. at 12 (J. Thomas) (upon receiving a letter of qualification and a fee, "a state shall issue a license"), 32-33 (some of the first applicants for expedited licensure under the IMLC received their licenses in a very short time); NABP Comment, *supra* note 67, at 3 ("Currently, the average processing time for a transfer application is less than 3 days. In some cases, license transfer applications are processed on the same day of receipt of the application."). Note that for some initiatives, a licensee may need to apply for a determination of eligibility for expedited treatment more than once. See Interstate Medical Licensure Comm'n ("IMLCC"), Rule on Expedited Licensure, sec. 5.6(1)(b) (2017) ("A letter of qualification is valid for 365 days from its date of issuance to request expedited licensure in a member state.").

¹⁰⁸ See, e.g., Roundtable Tr. at 12 (J. Thomas) (the fee for expedited licensure through the IMLC is \$700, \$400 of which goes to the IMLCC; in addition, the applicant must pay the licensing fee for each state of licensure).

¹⁰⁹ See, e.g., *supra* note 97 (discussion of expedited licensure pursuant to the processes of NABP, NCEES, and NCARB). Cf. IMLC sec. 4(c) ("The Interstate Commission is authorized to develop rules to facilitate redesignation of another member state as the state of principal license.").

C. Easing Barriers and Maintaining Accountability under Mutual Recognition and Expedited Licensure Initiatives

Mutual recognition of a single state license poses a lower barrier to cross-state practice than expediting licensure in multiple states. Those who favor expedited licensure tend to emphasize each state's ability to take adverse disciplinary action under its own license. Expedited licensure initiatives assert that their approach strikes the right balance between reducing the burden of multistate licensure and maintaining accountability at the state level.¹¹⁰

By contrast, initiatives that provide a privilege to practice under a single license tend to emphasize the ease of multistate practice,¹¹¹ and maintain that their systems protect the public by giving each state enforcement authority and providing for coordination of investigations and disciplinary actions.¹¹² For such initiatives, ease of multistate practice is further enhanced when licensees are not required to notify member states in which they are not licensed that they are practicing there. Such an arrangement likely will be the most effective in enhancing cross-state competition, improving access to services, and reducing the tendency of licensing to increase prices.

The nature of a profession, particularly the relative importance of multistate practice compared to relocation to another state, may be an important consideration in choosing a procedure for achieving license portability. On the other hand, a portability initiative could be crafted to achieve both goals—easing multistate practice through use of a mutual recognition model, while also expediting licensure upon relocation in another state. As discussed in the next section, the latter may depend on whether states' licensing standards are substantially equivalent, or can be harmonized pursuant to the portability initiative.

VI. Harmonization of Licensure Requirements

To instill confidence in the qualifications of practitioners licensed by other states and to encourage adoption of portability measures, both mutual recognition and expedited licensure initiatives have moved toward harmonization of state licensing standards in core areas. Generally, these include education, examination, and disciplinary and criminal history; some

¹¹⁰ See, e.g., Roundtable Tr. at 11 (J. Thomas) (“For states to be able to take action on a physician whose standard of care falls below the minimum standard, they need to act on a license. And so a reciprocal process would not work. We felt that each state would have to issue a license, but we would expedite the process, and we’d make the process much more efficient.”).

¹¹¹ See, e.g., Roundtable Tr. at 16 (K. Thomas) (under mutual recognition model, nurses do not have to apply for licensing in multiple states, pay fees in those states, and wait for approval before employment); *id.* at 24 (K. Thomas) (mutual recognition model makes “it easier for the licensees and easier for the bureaucrats who have to process all of this work”).

¹¹² See *infra* notes 123-125 and accompanying text.

professions also have experience requirements.¹¹³ While similar standards foster the acceptance of each state's licensees by other states, the standards need not be identical; rather, substantial equivalence of licensing requirements may be sufficient to generate confidence in out-of-state licensees, even under a mutual recognition model.¹¹⁴ Initiatives that expedite licensure also seek harmonization, to assure states considering adoption of an initiative that applicants licensed under expedited procedures will have met comparable standards.¹¹⁵

The licensing standards set by portability initiatives are often as demanding as those of the most restrictive states, or even higher.¹¹⁶ For example, the IMLC requires physicians to be board certified to qualify for expedited licensure; no individual jurisdiction has such a requirement.¹¹⁷ Representatives of such initiatives assert that higher standards are necessary to encourage widespread adoption by many states.¹¹⁸ They also point out that licensees who do not meet these standards may still qualify for an individual state license without a privilege to practice in other states, or may be able to obtain a license without the use of expedited procedures.¹¹⁹

¹¹³ The revised NLC (eNLC) includes certain uniform licensing requirements that were not in the original NLC, such as graduation from an approved nursing program, passing a standardized licensure examination, having an unencumbered state license, and having an FBI criminal background check. *See* Roundtable Tr. at 16 (K. Thomas) (explaining that these requirements were included in the revised version of the NLC because adoption of the original NLC had stalled and states said that the lack of uniform license requirements was a barrier to adoption); NLC art. III, secs. b, c (May 4, 2015). The UAA focused on standardizing the “three Es,” education, examination, and experience. *See* Roundtable Tr. at 18 (Webb); UAA, *supra* note 60, at I-9, ¶ 8 (uniformity among jurisdictions, especially with regard to examinations, education, and experience requirements, is a fundamental principle of the legislative policies of the AICPA and NASBA).

¹¹⁴ *See supra* notes 64, 98 and accompanying text (discussing the UAA's substantial equivalency standard and its adoption by 53 jurisdictions). The UAA relies on an the NASBA National Qualification Appraisal Service to determine whether state requirements for CPA licensure are substantially equivalent to those of other states, as well as whether individuals' qualifications are substantially equivalent. *See* UAA, *supra* note 60, at sec. 23(a); UAA, *supra* note 60, at App. B.

¹¹⁵ *See* Roundtable Tr. at 11 (J. Thomas) (states considering adoption of the IMLC needed standards for licensure of applicants for expedited licensing that all states could agree on); Craig N. Musselman et al., *A Primer on Engineering Licensure in the United States*, Sec. 3, 4, PROC. AM. SOC. ENGINEERING EDUC. ANN. CONF. (2011) (describing education, examination, and experience requirements for receiving “expedited comity” as a Model Law Engineer).

¹¹⁶ *See, e.g.*, Roundtable Tr. at 30 (K. Thomas) (the NLC “set[s] the highest standard . . . to make states comfortable with that mobility”).

¹¹⁷ *See* Roundtable Tr. at 29 (J. Thomas) (the IMLC “sets the bar higher than the usual licensure standard” and requires physicians to be board certified); IMLC § 2(k)(4).

¹¹⁸ *See* Roundtable Tr. at 29 (J. Thomas) (to encourage states to join the compact, IMLC requires board certification “because the states felt that if they were going to enter into this compact, it needed to be a higher bar.”); *infra* note 121.

¹¹⁹ *See* Roundtable Tr. at 16 (K. Thomas) (under the NLC, “[s]tates can still evaluate individuals for single-state license” that would not provide a privilege to practice in other states); *id.* at 29 (J. Thomas) (although the vast majority of physicians can meet the IMLC's standard for expedited licensure, those who cannot can still “apply through the traditional route to get a license in the traditional way.”).

Nonetheless, some oppose the imposition of higher standards and the extent to which these higher standards may exclude or deter some otherwise qualified applicants.¹²⁰ While many support certain requirements imposed by most states, such as criminal background checks,¹²¹ a substantive standard not imposed by most states could inhibit adoption of an initiative and reduce practitioners' use of portability procedures in participating states. Moreover, higher licensing standards exacerbate the tendency of licensing to restrict the labor supply and reduce competition, which may further increase prices, without any countervailing quality, health, or safety benefits.¹²² Thus, in designing a license portability initiative, developers of the initiative should aim for the least restrictive licensing standard that can gain the support of states nationwide.

VII. Authority for Disciplinary Action Across State Lines

For portability initiatives in which a single state license provides a privilege to practice in all member jurisdictions, mechanisms to ensure that disciplinary action may be taken against a practitioner, regardless of where a violation occurs, are essential to acceptance and adoption of the initiative. Because a state can only revoke a license that it issued, portability initiatives that operate under a mutual recognition model generally have procedures for member states to bring adverse actions that can affect not only the privilege to practice in the state where the violation occurred, but also an out-of-state practitioner's license. The initiative may require the state of licensing to evaluate out-of-state conduct under its own laws, or the laws of the other state.¹²³ To help coordinate investigations and adverse actions in member jurisdictions, license portability

¹²⁰ See *id.* at 29 (J. Thomas) (“there’s been criticisms that [the IMLC] is meant to keep certain individuals out. That’s actually not the case. It’s meant to just set a higher standard of safety.”).

¹²¹ See *id.* at 30 (K. Thomas) (“So one of the big issues for us was criminal backgrounds. And states would not feel comfortable with any state that did not do an FBI criminal background check. In particular, felonies were a big concern to the states that wouldn’t join before.”). Cf. *id.* at 12-13 (J. Thomas) (explaining that instituting FBI criminal background checks has been challenging because not all states that joined the IMLC meet the statutory requirements to obtain FBI criminal background checks of applicants; such states cannot serve as a state of principal license).

¹²² See, e.g., Nicholson & Propper, *supra* note 9, at 885; Morris M. Kleiner & Robert T. Kudrle, *Does Regulation Affect Economic Outcomes: The Case of Dentistry*, 43 J.L. ECON. 547, 576-77 (2000) (stricter state licensing standards did not improve dental health outcomes, but did raise the prices of dental services).

¹²³ For example, under the UAA, CPAs providing services in a state under a privilege to practice must comply with that state’s practice act and are automatically subject to the disciplinary authority of the Board of that state. Moreover, the Board of the state of licensure is required to investigate complaints made by Boards of other states, and also has the authority to discipline licensees who violate the laws of other states when providing services in them. See Roundtable Tr. at 19 (Webb) (describing the authority of states to take action against a licensee’s privilege to practice, and the requirement that home states investigate and discipline licensees for violations of other states’ laws); UAA, *supra* note 60, at sec. 23(a), (b). Similarly, under the NLC, party states are rapidly notified about complaints and have the authority to take action against a nurse’s privilege to practice in their states. In addition, the Board of the state of licensure must take action under its own laws regarding conduct in other states as if the conduct occurred in-state. See Roundtable Tr. at 25 (K. Thomas); NLC art. III, secs. d, e; art. V, sec. a(1).

initiatives typically require states to report complaints and adverse actions to a central database of licensee information, as well as to the state of licensing.¹²⁴ Such provisions may provide for “stronger and more efficient state board enforcement in the context of modern cross-border and electronic commerce in which state lines are often blurred.”¹²⁵

Portability initiatives that expedite licensure, rather than allow multistate practice under a single license, may also enable member states to coordinate information about licensees’ conduct and adverse actions, even though every state where a practitioner practices has the authority to take action based on its own license. For example, the IMLC requires certain information about licensees’ conduct and disciplinary actions to be submitted to a central database.¹²⁶ It also allows a state to investigate, by itself or jointly with other states, violations of state medical practice acts that occurred in other member states.¹²⁷ Moreover, when the state of principal license revokes or suspends a physician’s license, the physician’s licenses in other member states are automatically placed on the same status; a disciplinary action by *any* IMLC member board can lead to disciplinary action by other member jurisdictions.¹²⁸

VIII. Streamlining Licensure in Multiple Occupations: Portability Initiatives for Military Families Required to Move to Another State

While license portability initiatives can streamline licensing upon a move to a new state, some initiatives primarily address multistate practice rather than the mechanics of relicensing in a new state. Moreover, many occupations have not taken steps to improve license portability. The burden of obtaining a license in a new state, which may be costly and delay employment, falls disproportionately on populations that move frequently. Because military families typically move every two to four years, the burden of applying for a new license with each move across

¹²⁴ See, e.g., Roundtable Tr. at 27 (K. Thomas) (people who are under investigation in one state cannot escape by moving to another state, because of the information in the database); NLC art. III, sec. d (notice of adverse action to coordinated licensure information system and home state); art. VI secs. a, c (requiring member states to participate in a coordinated licensure information system covering licensure and disciplinary history, and to report significant investigative information and any adverse action); UAA, *supra* note 60, at sec. 12(k) (requiring Boards to report disciplinary actions against CPAs with a privilege to practice in other states to state boards or a multistate enforcement network).

¹²⁵ UAA, *supra* note 60, at I-2.

¹²⁶ See, e.g., IMLC sec. 8; Roundtable Tr. at 12 (J. Thomas) (“any complaint in any of the compact states is shared automatically with other states . . . [the compact] provides better information sharing” when physicians have licenses in multiple jurisdictions).

¹²⁷ See, e.g., IMLC sec. 9.

¹²⁸ See IMLC sec. 10.

state lines is high for the 35 percent of military spouses in the labor force who work in occupations that require state licensing.¹²⁹

The U.S. Department of Defense State Liaison Office (“DoD-SLO”) has worked with states to reduce barriers to licensing for relocated military spouses working in many or most occupations requiring licensing.¹³⁰ The DoD-SLO has encouraged states to use one or more of three options to enhance license portability for military spouses: (1) facilitating endorsement of existing licenses from jurisdictions with substantially equivalent requirements (avoiding the need for re-examination); (2) providing temporary licenses for spouses who do not qualify for endorsement; and (3) expediting the process of getting a license.¹³¹ Fifty-six percent of the states have adopted statutory provisions requiring all three approaches, and all states now require at least one mechanism to aid military spouses.¹³²

However, certain professions, such as teaching, are not covered by most states’ provisions for streamlining licensing of military spouses. Teachers seeking licensure in a new state often must take additional courses and tests, and the process takes time and is costly—especially for young teachers with little experience.¹³³ Thus, the DoD-SLO is working with states to remove specific impediments to licensing of transitioning military spouses for teaching and other occupations that are not otherwise covered by their streamlining initiative.¹³⁴ For some occupations, the DoD-

¹²⁹ See Roundtable Tr. at 20 (Beauregard); U.S. Dep’t of the Treasury & U.S. Dep’t of Defense, *supra* note 14, at 3, 7, 9.

¹³⁰ See Roundtable Tr. at 20-21 (Beauregard). A statutory provision facilitating licensure of military spouses may apply to many or all licensing boards within a regulatory agency that oversees the licensing boards. See, e.g., U.S. Dep’t of the Treasury & U.S. Dep’t of Defense, *supra* note 14, at 16 (discussing legislation to facilitate the licensure by endorsement process for military spouses that is applicable to 77 occupations regulated by the Colorado Department of Regulatory Agencies).

¹³¹ See Roundtable Tr. at 21 (Beauregard). The processes for expedited licensure for these initiatives is not the same as those discussed above. Rather, an application may be expedited by other means, including allowing military spouses to use time-saving options, such as submitting photocopies of state certificates and test scores; setting deadlines for adjudication of applications from military spouses; or giving individual boards authority to approve a license based on an affidavit from the applicant that the information provided is true and that verification has been requested. See, e.g., U.S. Dep’t of Defense, Removing Certification Impediments for Transitioning Military Spouse Teachers, Best Practices, 1, <http://download.militaryonesource.mil/12038/USA4/2016/best-practices/Sp-Teacher-Certification-BPI5.pdf>; Roundtable Tr. at 23 (Beauregard).

¹³² See Roundtable Tr. at 21 (Beauregard); Beauregard, FTC Presentation, at 4, https://www.ftc.gov/system/files/documents/public_events/1224893/slides_-_marcus_beauregard_dod_-_slo.pdf.

¹³³ See U.S. Dep’t of Defense, Removing Certification Impediments for Transitioning Military Spouses, 1, <http://download.militaryonesource.mil/12038/USA4/2017/one-pagers/Sp-Teacher-Certification-OPI9.pdf>; Roundtable Tr. at 14 (Rogers) (although almost all jurisdictions have signed the Interstate Agreement of the National Association of State Directors of Teacher Education and Certification, which provides a database of state requirements, licensure of teachers is very complex and state certification requirements vary, so it is very difficult for inexperienced teachers such as young military spouses to become licensed in a new state).

¹³⁴ See Roundtable Tr. at 22 (Beauregard). See USA4 MilitaryFamilies, DoD-SLO, *Removing Certification Impediments for Transitioning Military Spouses*, http://www.usa4militaryfamilies.dod.mil/MOS/?p=USA4:ISSUE:0:::P2_ISSUE:9. The DoD-SLO has also commissioned a study to find out more about how the states have implemented their statutory measures to facilitate

SLO also is addressing the issue by supporting interstate licensure compact provisions that facilitate licensing of military members and their spouses.¹³⁵

A potential bonus from the DoD-SLO's initiatives is that some of the procedures that have proven useful for expediting licensing of military spouses could be adopted for general use, to speed licensing for anyone. For example, temporary licensing, allowing submission of photocopies of state certificates and test scores until official copies can be obtained, and conditionally approving applications without waiting for a board meeting, could be made more broadly available to all applicants.¹³⁶

IX. Conclusion

Occupational licensing can protect consumers from health and safety risks, generally in situations where consumers lack sufficient information to assess the qualifications of professionals. That said, licensing occupations also restricts competition. By establishing the entry requirements for an occupation, licensing regulations tend to reduce the number of market participants. In turn, this reduction in supply leads to a loss of competition, potentially resulting in higher prices and lower quality and convenience of services.

A key barrier imposed by licensing is the inability of qualified professionals licensed by one state to work in another state. There is little justification for the burdensome, costly, and redundant licensing processes that many states impose on qualified, licensed, out-of-state applicants. Such requirements likely inhibit multistate practice and delay or even prevent licensees from working in their occupations upon relocation to a new state. Indeed, for occupations that have not implemented any form of license portability, the harm to competition from suppressed mobility may far outweigh any plausible consumer protection benefit from the failure to provide for license portability.

Moreover, a slow and burdensome process for cross-state practice is unnecessary. There are many options to enhance license portability. Individual states have adopted initiatives to streamline licensing of military spouses in many occupations. Some professions have developed model laws or interstate compacts that improve licensure portability nationwide. These examples of successful portability suggest further liberalization and reform is both possible and beneficial.

licensure for military members and spouses, and how effective these requirements have been. *See* Roundtable Tr. at 21 (Beauregard).

¹³⁵ *See, e.g.*, Roundtable Tr. at 22 (Beauregard); Licensing Compacts Recognizing Military Requirements, http://www.usa4militaryfamilies.dod.mil/MOS/?p=USA4:ISSUE:0:::P2_ISSUE:7; REPLICA sec. 7(b) (Sept. 2014) ("Member states shall expedite the processing of licensure applications submitted by veterans, active military service members, and members of the National Guard and Reserves separating from an active duty tour, and their spouses."); PTLC sec. 5 (military members and spouses may designate the home of record, permanent change of station, or state of current residence as the home state).

¹³⁶ *See* Roundtable Tr. at 24 (J. Thomas) (discussion of expediting licensure of physicians in Minnesota).

Accordingly, for occupations that generally require state licensing as a public protection measure, FTC staff encourages stakeholders such as licensees, professional organizations, organizations of licensing boards, and state legislators to consider the likely competitive effects of options to improve license portability. As stakeholders evaluate those options, we suggest that they consider the following points:

- Both model laws and interstate compacts have been used to improve licensure portability for individual occupations
- For reducing barriers to multistate practice, consider the use of a mutual recognition model, in which licensees need only one state license to practice in other member states and are not required to give notice of their intent to practice in another state
- Alternatively, consider easing multistate practice by expediting licensure in each intended state of practice
- Take steps to ease licensure upon relocation to a new state, whether by expediting the process or by allowing licensees to practice in the new state of residence under an existing multistate license during processing of the application
- Harmonize state licensure standards, using the least restrictive standard that can gain the support of states nationwide
- State-based efforts to reduce barriers to licensing of relocated military spouses often address multiple occupations that require licensing
- At the state level, consider expanding the use of temporary licensing and other procedures that have helped reduce the burden of licensing for relocated military spouses to all applicants licensed by another state

Each type of portability initiative has advantages and disadvantages, and all take time and effort to develop and implement. However, a thoughtful consideration of the needs of a profession and the consumers it serves is likely to lead to a solution that can gain the support of licensees, licensing boards, the public, and state legislatures. Moreover, by enhancing the ability of licensees to provide services in multiple states, and to become licensed quickly upon relocation, license portability initiatives can benefit consumers by increasing competition, choice, and access to services, especially where providers are in short supply.

X. Appendix

Panelists

FTC Roundtable, *Streamlining Licensing Across State Lines, Initiatives to Enhance Occupational License Portability* (July 27, 2017)

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