



**INDEPENDENCE  
INSTITUTE.ORG  
ISSUE BRIEF**

## **House Bill 17-1057: Membership in an Interstate Compact for Physical Therapy Licensing**

By Linda Gorman

### **What the Bill Does:**

This bill would codify model legislation created by the American Physical Therapy Association and the Federation of State Boards of Physical Therapy in Colorado law.

The model legislation says that Colorado will be a member of an interstate compact that establishes the Physical Therapy Compact Commission.

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The Commission will create and operate a data system to track licensure, investigations, and disciplinary actions against any licensed physical therapists and physical therapy assistants practicing in any member states.

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Colorado must cooperate with all investigations and adverse action reporting requirements required by the Commission. The Commission can sue Colorado for failing to meet its requirements.

The Commission's rules will have the effect of law and be binding on all member states. The Commission sets up its own administrative structure, runs its own finances, accepts grants and donations, and establishes a database. It will have the power to "levy on and collect an annual assessment from each member state or impose fees on

other parties to cover the cost of the operations and activities of the Commission and its staff... the aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule binding upon all member states."

The Commission will create and operate a data system to track licensure, investigations,

and disciplinary actions against any licensed physical therapists and physical therapy assistants practicing in any member states. It may include "other information" that it deems useful. The Colorado Bureau of Investigation must forward physical therapist fingerprints or other biometric information to the Commission. Applicants can be charged fees for required background investigations.

Each member state will appoint one delegate to the Commission. The delegate must be a member of Colorado's physical therapy licensing board. In general, the members of the Commission are immune from suit and liability. If they are sued, the Commission shall defend them in any civil action and pay any judgements against them. The Commission will have an Executive Board consisting of 7 voting members chosen from the state delegates and 2 non-voting members, one from a physical therapy professional association and one from an association of physical therapy licensing boards.

The Commission can make whatever rules it sees fit for the conduct of physical therapy in member states. Those rules can only be repealed if "a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact within 4 years of the date of adoption of the rule."

The Commission can hold public meetings and hearings. The Commission can hold secret meetings with sealed minutes for a variety of reasons.

Though Colorado will still control the licensing of physical therapists in Colorado, physical therapists licensed by any other compact member will be able to practice in Colorado. Colorado must agree to have “continuing competence” requirements, presumably those set by the Commission, “as a condition for license renewal.”

If Colorado becomes a member of the Compact, physical therapists licensed by Colorado can practice in other member states if they meet the laws and regulations of those states. If one of those states takes any action against the therapist, he may be barred from practicing in all compact states other than Colorado for 2 years.

### **Analysis:**

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have the force of law, and is not subject to the checks and balances of representative government. The benefits to taxpayers from joining such an organization are not clear. No evidence has been offered to suggest that Colorado’s State Physical Therapy Board fails to adequately protect state citizens from unskilled physical therapists.

If Colorado wishes to let physical therapists from other states practice in Colorado all it has to do is recognize licenses from other states. It already does this in most cases without paying dues to support a Commission.

Physical therapists licensed by Colorado may already apply for licenses in other states.<sup>1</sup>

Passing this legislation would place a trade association composed of physical therapists in charge of some of the rules and regulations governing the practice of physical therapy in

Colorado. Professional trade associations have historically passed rules that make it more difficult and more expensive to provide professional services. It is unlikely that the Commission will provide more oversight than the Colorado hospitals, nursing homes, and private practices that hire physical therapists, and which are liable for the actions of their employees. It is also unlikely that the Commission will provide more oversight than that already provided by Colorado’s State Physical Therapy Board.

Finally, secret meetings for disciplinary actions, the difficulty of rolling back the rules the Commission passes, and immunity from liability for its actions all reduce the Commission’s accountability. Experience with medical and dental licensing boards in several states suggests that such concentrated power is sometimes misused. The Compact language does not include due process guarantees. This, along with the ability to blacklist a therapist in every state if any one state takes action against him, could make it impossible for someone to earn a living in his profession even if the action taken against him was unjustified.<sup>2</sup>

<sup>1</sup> See <http://www.visalaw.com/wp-content/uploads/2014/10/ptchart.pdf> for a 2014 description of licensing requirements.

<sup>2</sup> The Oklahoma Board of Medical Licensure and Supervision has been accused of unjustified prosecution, motivating a 2016 reform bill, HB 1412. In Rhode Island, zealous prosecution by the Board of Medical Licensure and Discipline led to a special investigative commission. Its final report is available at <http://www.rilin.state.ri.us/commissions/mldcomm/commdocs/Final%20Report%20BMLD%203-31-2016.pdf?Mobile=1>. In some cases there may be anti-trust concerns. According to *Health Affairs Blog*, In February 2015, in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, the US Supreme Court subjected medical boards with a majority of members from the regulated profession to antitrust lawsuits unless they are actively supervised by the state itself.