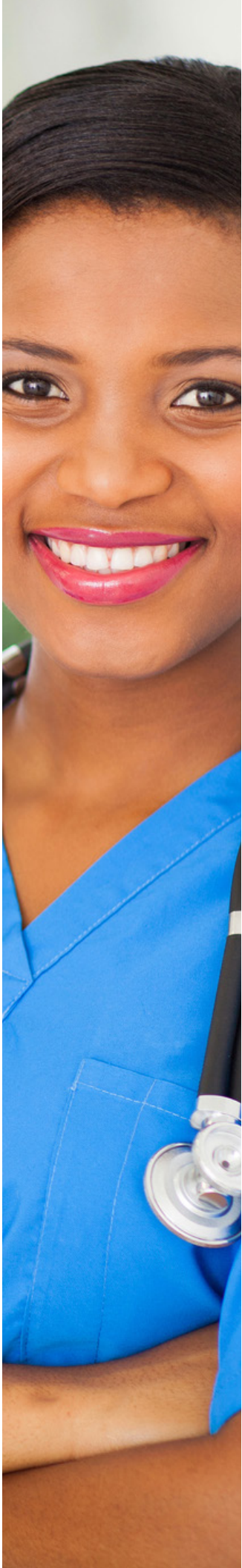




Multistate Problem Solving with Interstate Compacts



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The U.S. Bureau of Labor Statistics estimates the number of licensed occupations in the U.S. has risen from 5 percent of the workforce in the 1950s to approximately 25 percent of today's workforce. Navigating the various state licensing requirements, rules, regulations and fee structures can present significant challenges for workers.

To address these challenges, states and professions have turned to occupational licensure interstate compacts. These compacts create reciprocal professional licensing practices between states, while ensuring the quality and safety of services and safeguarding state sovereignty. To date, over 40 states and territories have adopted occupational licensure compacts for nurses, physicians, physical therapists, emergency medical technicians and psychologists.

What Are Interstate Compacts?

As a distinctly American invention, interstate compacts promote multistate problem-solving in the face of complex public policy issues and federal intervention. The Compacts Clause of the Constitution—Article I, Section 10, Clause 3—grants states the authority to enter into interstate agreements to achieve a common purpose.

Compacts are formal agreements between two or more states that bind them to the compacts' provisions, just as a contract binds two or more parties in a business deal. As such, compacts are subject to the principles of contract law and are protected by the constitution's prohibition against laws that impair contractual obligations. Compacts have the force and effect of statutory law and take precedence over conflicting state laws regardless of when those laws are enacted. Once enacted, compacts may not be unilaterally renounced by a member state, except as provided by the compacts themselves. Congress and the courts can compel compliance with the terms of interstate compacts, making compacts one of the most effective means of ensuring interstate cooperation.

Interstate compacts do several important things, including:

- Establishing a formal, legal relationship among states to address common problems or promote a common agenda.
- Creating independent, multistate, governmental authorities (such as commissions) that can address issues more effectively than a state agency acting independently could or when no state has the authority to act unilaterally, or beyond its border.
- Establishing uniform guidelines, standards, or procedures for agencies in the compact's member states.
- Assisting states in developing and enforcing stringent standards, while providing an adaptive structure that, under a modern compact framework, can evolve to meet new and increased demands over time.

Compacts provide states the opportunity to cooperatively address policy issues in the face of an increasingly active federal government. With the federal dynamic constantly shifting between all levels of government, interstate compacts are an attractive alternative to ensure state agreement on complex policy issues, establish state authority over areas reserved for states, and allow states to speak strongly with one unified voice. Without compacts, federal involvement in traditional state policy areas is an increasing possibility.

While compact language itself is crucial to a compact's success, modern regulatory compacts often expand upon the basic agreement with additional governing and administrative structures. As the administrative nature of state government has evolved over the last half-century, it has become necessary to develop structures and organizational procedures that transcend one state's internal operation and apply uniformly to all member jurisdictions. It has also become apparent that an officially sanctioned governing body is necessary to ensure accountability, training, compliance, enforcement and rulemaking to make the agreement a success.

When developing an interstate compact, it should contain the minimum basics upon which the compact needs to operate, both in terms of the agreement among states and the operation of a governing body, representing the member states. The compact does not need to address every conceivable eventuality, nor should it. Its purpose is to provide the framework upon which to build. By using the compact as the broad framework, rules can be adapted and adjusted as needed without the need to receive legislative approval each time from the member states.

As we become more integrated socially, culturally and economically, the volume of policy issues will only increase, and interstate compacts may well prove to be an apt mechanism for developing state-based solutions.

What are the Benefits of Interstate Compacts?

Unlike federally imposed mandates that often dictate unfunded and rigid requirements, interstate compacts provide a flexible, state-developed structure for collaborative and dynamic action while building consensus among the states. Compacts offer the following benefits:

- Compacts settle interstate disputes.
- Compacts provide state-developed solutions to complex public policy problems, unlike federally imposed mandates.
- Compacts respond to national priorities in consultation or partnership with the federal government.
- Compacts allow states to retain sovereignty in matters traditionally reserved for the states with regional or national implications.
- Compacts create economies of scale to reduce administrative costs.



States Constitutions & Interstate Compacts

Compact language is drafted with state constitutional requirements in mind that are common to most state constitutions, such as separation or delegation of powers and debt limitations. The validity of the state authority to enter into compacts and give authority to an interstate agency has been specifically recognized and unanimously upheld by the U.S. Supreme Court in *West Virginia v. Sims*.

Challenges of Interstate Compacts

Compacts are negotiated agreements among member states that have the status of both contract and statutory law. More important, compacts represent the only mechanism in the Constitution by which the states themselves can alter the fundamental dynamics of their relationships without the intervention of the federal government. Unlike other means of interstate cooperation, compacts create a state-based solution to regional or national problems and effectively retain policy control over certain interstate matters for the future.

While there are other forms of interstate cooperation available for states to achieve common goals, such as reciprocal agreements and uniform laws, none is more formal, more state-centered, more adaptable to collective state needs than interstate compacts.

However, Interstate compacts efforts may require a great deal of time to both develop and implement. While recent interstate compact efforts have met with success in a matter of a few years, especially licensure compacts, some interstate compacts have required decades to reach critical mass.

The cost of developing a compact varies depending largely upon the desired timelines, the level of external stakeholder involvement, and the level of education de-

sired within each state. No two compacts are alike and therefore issues addressed by one compact may require different development considerations than do others.

Some compacts have enjoyed massive federal support, such as the Adult Offender Compact which received more than \$1.2 million from the National Institute of Corrections. Occupational licensure compacts have also been the beneficiary of federal support. Both the Medical Compact and PsyPact have received Health Resources and Services Administration (HRSA) grants. Recent experience with occupational licensure compacts demonstrates expected cost of development at approximately \$500,000 to \$600,000.

Despite the challenges, as the balance of power continues to realign in our federalist system, states may only be able to preserve their sovereign authority over interstate problems to the extent that they share their sovereignty and work together cooperatively through interstate compacts.

Best Practices for Developing Regulatory Compacts

The development of any interstate compact should be state-driven. The compact development process has evolved for more than 200 years, and maintaining the integrity of the development process remains crucial to the success of a compact. Unlike most legislation, a compact bill should not be amended from its original form after introduction because it legally functions as the acceptance of a contractual agreement between states. Compacts can be easily derailed if the appropriate stakeholders and groundwork have not been addressed on the front end. Legislative buy-in is crucial.

Outlined below are key steps to the development process of a regulatory compact. These should be viewed as examples and can be customized as needed.

ADVISORY GROUP: Composed of state officials and other critical stakeholders, an Advisory Group examines





the realm of the problem, suggests possible solutions, and makes recommendations as to the structure of the compact. Typically, an Advisory Group is composed of approximately 20 individuals, each representative of various groups and states. An Advisory Group meets one or two times over a period of two to three months, with their work culminating in a set of recommendations as to what the final compact product should look like.

DRAFTING TEAM: A Drafting Team pulls the thoughts, ideas and suggestions of the Advisory Group into a draft compact. The Drafting Team, composed of 5 to 8 compact and issue experts, will translate the recommendations, as well as their own thoughts and expertise, into a draft compact that will be circulated to state officials for comment. The document will also be open for comments from a wide swath of stakeholders and the public. Following a comment period, the compact will be revised as needed and released to the Advisory Group for final review to ensure it meets the original spirit of the group's recommendation.

EDUCATION: Once completed, the compact would be available to states for legislative approval. During this phase of the initiative, state-by-state technical assistance and on-site education are key to success. Most state legislators have limited knowledge about interstate compacts, and with such a major issue being addressed, increasing awareness in each state is imperative. Previous interstate compact efforts have convened end-of-the-year legislative briefings for state officials to educate them on the solutions provided by the interstate compact. Education occurs before and during state legislative sessions.

ENACTMENT: Most interstate compacts are effective upon contingency. They typically activate when triggered by a pre-set number of states join the compact. For instance, the Interstate Medical Licensure Compact was triggered when seven states joined.

TRANSITION: Following enactment by the required number of states, the compact becomes operational and, dependent upon the administrative structure placed in the compact, goes through standard start-up activities such as state notification, planning for the first commission or state-to-state meetings, and hiring of staff to oversee the agreement and its requirements if authorized by the compact. A critical component of the transition will be the development of the rules, regulations, forms, standards, etc. by which the compact will operate.

Compact Phases of Development

Phase I - Development

Advisory Group

- Composed of approximately 20 state officials, stakeholders and issue experts
- Examines issues, current policy, best practices and alternate structures
- Establishes recommendations for the content of an interstate compact

Drafting Team

- Composed of five to eight state officials, stakeholders, and issue experts
- Crafts compact based on recommendations
- Circulates draft compact to states and stakeholder groups for comment

Final Product

- Drafting team considers comments and incorporates into compact
- Final product sent to advisory group
- Released to states for consideration

Phase II - Education and Enactment

Education

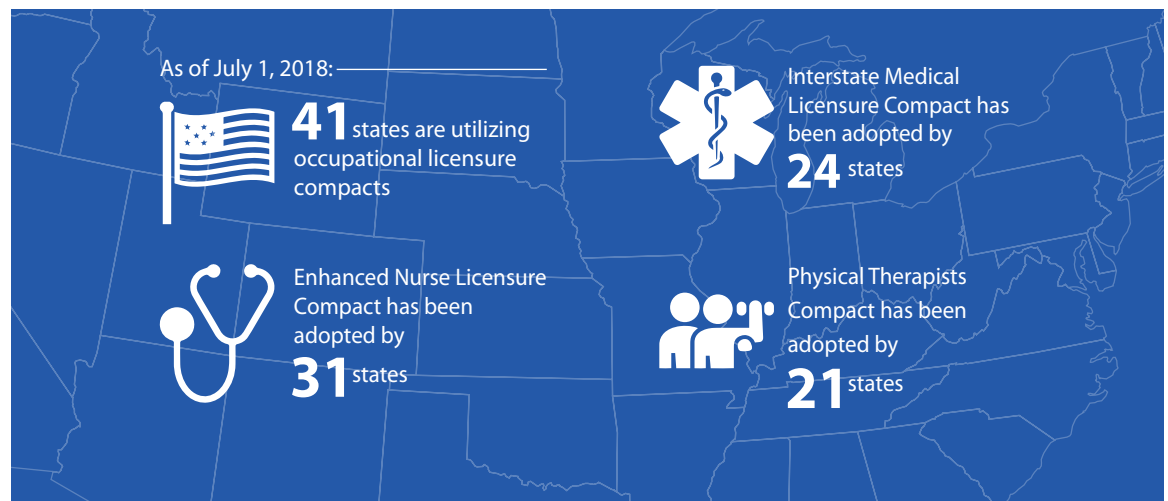
- Develop comprehensive legislative resource kit
- Develop informational internet site with state-by-state tracking and support documents
- Convene "national briefing" to educate legislators and key state officials

State Support

- Develop network of "champions"
- Provide on-site technical support and assistance
- Provide informational testimony to legislative committees

State Enactments

- Track and support state enactments





- Prepare for transition and implementation
- Provide requested support as needed

current compacts, their administration and compact law generally

Phase III - Transition and Operation

Transition

- Enactment threshold met
- State notification
- Interim executive board appointed
- Interim committees established
- Convene first compact commission meeting
- Information system development (standards, security, vendors)

Operation

- Ongoing state control and governance
- Staff support
- Annual assessment, if necessary
- Annual business meeting
- Information system oversight (maintenance, security, training, etc.)
- Long-term enhancements / up-grades

Remote and On-Site Technical Assistance

- Technical assistance in determining the need for new interstate compacts
- Examination and/or revision of existing interstate agreements

Administration and Resources

- Assistance in streamlining administrative structures and procedures
- Assistance in defining budgetary needs for compact operations
- Assistance in obtaining federal support of compacts
- Development of compact standards regarding structure, language, rules, regulation, compliance and enforcement

Training

- Training curriculum for compact administrators, compact staff and key stakeholder groups
- Annual training institute and annual technology conference

The Council of State Governments National Center for Interstate Compacts

More than 200 interstate compacts are now in effect between and among states, each housed independently within a member-state agency. The Council of State Governments National Center for Interstate Compacts, or NCIC, combines policy research with best practices and functions as a membership association, serving the unique needs of compact administrators, compact commissions, and the state agencies in which interstate compacts reside. NCIC is research-based and member-driven with significant services provided to the interstate compact community.

The suite of services offered by NCIC includes:

Education and Information

- Education of stakeholder groups, compact staffs, and state and local officials on the history, legality, structure, mechanics and use of compacts
- Promotion of the use of compacts to solve multi-state and cross jurisdictional problems
- Online repository containing language, bylaws, rules and assorted documents for every compact currently in existence as well as general interstate cooperation materials
- Updates on compact activities around the nation and state/federal activities affecting

CSG has been involved in the development and implementation of every recent occupational licensure interstate compact, including:

- Interstate Medical Licensure Compact (IMLC)
- Enhanced Nurse Licensure Compact (eNLC)
- Physical Therapist Compact (PTC)
- Emergency Medical Technicians Compact (REPLICA)
- Psychologist Interstate Compact (PsyPact)

Additionally, NCIC has participated in the creation of numerous compacts that count all 50 states as members, including:

- Interstate Compact for Adult Offender Supervision
- Interstate Compact for Juveniles
- Interstate Compact for the Placement of Children
- Emergency Management Assistance Compact
- Military Children's Interstate Compact

CSG is uniquely positioned to offer a full-range of services to states that need not only information and expertise, but also guidance and technical assistance in dealing with interstate compacts and other interstate agreements. Since 1933, CSG has been at the forefront of promoting multi-state problem solving and championing the role of states in determining their respective futures.



■ The National Center for Interstate Compacts (NCIC)

NCIC is a policy program developed by CSG to assist states in developing interstate compacts, which are contracts between states. State governments often prefer to direct themselves collaboratively when addressing problems that span boundaries, and compacts have proved to be an effective mechanism for states to jointly problem-solve, often avoiding federal intervention. NCIC serves as an information clearinghouse, a provider of training and technical assistance and a primary facilitator in assisting states in the review, revision and creation of new interstate compacts to solve multi-state problems.

The compacts center is a program borne from CSG's more than 85 year history of promoting multi-state problem solving and advocating the role of the states in determining their respective futures. During that time, CSG began tracking the progress of more than 200 active interstate compacts, researching innovative solutions for the states and bringing the states together to build consensus on national issues.

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**National Center for
Interstate Compacts**

THE COUNCIL OF STATE GOVERNMENTS