

OCCUPATIONAL THERAPY LICENSURE COMPACT

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<http://www.house.mi.gov/hfa>

House Bill 4103 as introduced
Sponsor: Rep. Julie M. Rogers

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4104 as introduced
Sponsor: Rep. Douglas C. Wozniak

Committee: Health Policy
Complete to 3-18-25

SUMMARY:

House Bills 4103 and 4104 would amend the Public Health Code to enter Michigan into the Occupational Therapy Licensure Compact (OTLC), which allows occupational therapists and occupational therapy assistants to practice occupational therapy in states that are parties to the compact without having to be licensed in each individual state.¹ (A compact is like a contract between states that states enter into by enacting its provisions as law.) House Bill 4103 would make Michigan a party to the OTLC, and House Bill 4104 would make some related changes to the code's occupational therapy licensure provisions.

House Bill 4103 would add section 16188 to the Public Health Code to enter Michigan into the OTLC, which is included in full in the bill and described briefly below.

Section 1: Purpose

The OTLC states that its purpose is to facilitate interstate practice of occupational therapy with a goal of improving access, while preserving the regulatory authority of states to protect health and safety through their current systems of licensure. Among other things, the OTLC says that it is designed to facilitate the use of telehealth technology to increase access to occupational therapy services.

Section 2: Definitions

This section defines 26 terms that pertain to the execution of the duties outlined in the OTLC. Notably, **compact privilege** is defined as the authorization (equivalent to a license) granted by a state to allow a licensee from another member state to practice as an occupational therapist or occupational therapy assistant in the *remote state* under its laws and rules. The practice of occupational therapy is considered to occur in the state where the patient or client is located at the time of the encounter.

Section 3: State participation in the compact

To participate in the OTLC, a state must do all of the following:

- License occupational therapists and occupational therapy assistants.
- Use only a recognized national examination as a requirement for licensure, as prescribed in rules of the Occupational Therapy Compact Commission.
- Have continuing education requirements as a condition of license renewal.

¹ <https://otcompact.org/about/>

- Within a time frame established by the commission, require a criminal background check for a licensee who is seeking an initial compact privilege in another state. The background check must include obtaining criminal history records from the Federal Bureau of Investigation (FBI) and the relevant state agency through fingerprints or other biometric data. The member state must also use those criminal history records in making licensing decisions.
- Have a mechanism in place for receiving and investigating complaints about licensees.
- Notify the commission, as provided in the OTLC and rules, of any adverse action or the availability of investigative information regarding a licensee. (An adverse action is any administrative, civil, equitable, or criminal action imposed against an occupational therapist or occupational therapy assistant by a licensing board or other state authority. It includes such actions against an individual's license or compact privilege as censure, revocation, suspension, probation, monitoring, or practice restrictions.)
- Participate fully in the commission's data system, including using the commission's unique identifier. (The data system is described below.)
- Comply with the rules of the commission.

A member state must grant the compact privilege to an individual who holds a valid unencumbered license in another member state and may charge a fee for granting it.

The OTLC says that nothing in it affects a state's requirements for issuance of a single-state license. Individuals who do not reside in a member state can still apply for a single-state license under the laws of that state, but this license does not grant the compact privilege in any other member states.

A member state must provide for its delegate to attend all meetings of the Occupational Therapy Compact Commission.

Section 4: The compact privilege

To exercise or maintain the compact privilege under the OTLC, a licensee must do all of the following:

- Hold a valid, unexpired license in their state of residence (referred to as the *home state*).
- Have a valid Social Security number or national practitioner identification number.²
- Have no encumbrance (restriction) on any state license.
- Be eligible for a compact privilege in any member state as described below.
- Have paid or completed, at least two years ago, all fines and requirements stemming from an adverse action against any license or compact privilege.
- Notify the Occupational Therapy Compact Commission that the licensee is seeking the compact privilege in a remote state.
- Pay any applicable fees, including any state fee, for the compact privilege.
- Complete a criminal background check, as described above, and pay any related fees.
- Meet any jurisprudence requirements established by the remote state where the licensee is seeking a compact privilege.
- Report to the commission adverse action taken by any non-member state within 30 days after that action.

² Often called the National Provider Identifier (NPI). See <https://www.cms.gov/outreach-and-education/medicare-learning-network-mln/mlnproducts/downloads/npi-what-you-need-to-know.pdf>

A licensee providing occupational therapy in a remote state under the compact privilege must function within that state's laws and regulations and is subject to its regulatory authority. The remote state may remove a licensee's compact privilege for a specific time, impose fines, or take any other necessary actions to protect health and safety.

If a licensee's *home* state license is encumbered, the licensee *must* lose the compact privilege in any remote state until two years have passed after the home state license is no longer encumbered. The licensee then must meet the requirements listed above to obtain the compact privilege in any remote state.

If a licensee's compact privilege in any *remote* state is removed, the licensee *may* lose (and be ineligible for) the compact privilege in any other state until two years have passed since the time period of that removal ended and the fines were all paid and any conditions met. The licensee then must meet the requirements listed above to obtain the compact privilege in any remote state.

Section 5: Home state licenses

An individual may hold a home state license in only one member state at a time.

A licensee who moves their primary residence from one member state to another must file an application for obtaining a new home state license by virtue of a compact privilege, pay all applicable fees, and notify the old and new home states in accordance with rules adopted by the commission. Upon receiving an application for obtaining a home state license by virtue of compact privilege, the new home state must verify that the individual meets the pertinent criteria of section 4 by using the commission's data system. There is no need for primary source verification, except for the following:

- An FBI fingerprint-based criminal background check if not previously performed or updated under rules adopted by the commission.
- Any other criminal background check as required by the new home state.
- Submission of any jurisprudence requirements of the new home state.

The former home state must convert the former license into a compact privilege once the new home state activates the new license in accordance with rules adopted by the commission.

If the licensee cannot meet the criteria in section 4, the new home state must instead apply its requirements for issuing a new single-state license. In addition, if a licensee moves from a member state to a non-member state, or vice versa, the state criteria apply for issuance of a single-state license in the new state. The OTLC says that it does not affect a licensee's ability to hold a single-state license in multiple states or the requirements established by a member state for issuance of a single-state license.

Section 6: Active duty military personnel and their spouses

Active duty military personnel, or their spouses, must designate a home state where they have a current license in good standing and can keep the home state designation while the service member is on active duty. Once one is designated, the individual can change their home state only by applying for licensure in the new state or through the process described in section 5.

Section 7: Adverse actions

A home state has the exclusive power to take adverse action against an occupational therapy license issued by it. A home state, following its own procedures, may take adverse action based on the factual findings of a remote state. For purposes of taking adverse action, a home state must treat conduct reported by a member state the same as if the conduct had occurred in the home state.

If a home state takes adverse action against a license, the licensee's compact privilege in all other member states is deactivated until all encumbrances have been removed from the home state license, and the applicable disciplinary orders must include a statement to that effect.

A remote state may take adverse action against a licensee's compact privilege in that state and may issue subpoenas for hearings or investigations that compel the testimony of witnesses or production of evidence. Member states must enforce such subpoenas issued by an occupational therapy licensing board of another member state. The authority issuing the subpoena must pay any related fees and expenses.

A member state that takes adverse action must promptly notify the administrator of the data system, who must promptly notify home states of any adverse actions by remote states.

The home state must complete any pending investigations of a licensee who changes their primary state of residence while investigations are ongoing, may take appropriate actions, and must promptly report the conclusions of the investigations to the data system. The data system administrator must promptly notify the new home state of any adverse actions.

Member states may participate in joint investigations of licensees. Member states must share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation under the OTLC.

Instead of an adverse action, member states may, at their discretion, use participation in a nondisciplinary monitoring process approved by an occupational therapy licensing board (referred to as an "alternative program").

Section 8: Occupational Therapy Compact Commission

The OTLC creates the Occupational Therapy Compact Commission as a joint public agency consisting of one delegate from each member state who is either a licensee member or public member of that state's licensing board or the board's administrator. Delegates are selected by each state's licensing board, with a term of office as established by the commission. A member state can remove or suspend its delegate and must fill any vacancy within 90 days. Each delegate has one vote with regard to issuing rules and creating bylaws and otherwise has an opportunity to participate in the business and affairs of the commission.

The OTLC enumerates several powers and duties of the commission, such as those related to its bylaws, its code of ethics, rulemaking, recordkeeping, personnel, budgeting, grants or loans, insurance and bonds, property, litigation, the creation of committees, and the performance of other functions to achieve the purposes of the OTLC consistent with the state regulation of occupational therapy licensure and practice.

The commission must establish an executive committee to act on its behalf. The committee consists of nine members: seven voting members elected by the commission from its current membership and two nonvoting members selected by, respectively, a recognized national occupational therapy professional association and a recognized national occupational therapy certification organization. The executive committee must meet at least annually and, in addition to performing other duties as provided in rules or bylaws, must do all of the following:

- Recommend changes to the rules, bylaws, or the OTLC; fees paid by member states; and any commission compact fee charged to licensees for the compact privilege.
- Ensure that compact administration services are appropriately provided.
- Prepare and recommend the budget.
- Maintain financial records on behalf of the commission.
- Monitor compliance of member states with the OTLC and provide compliance reports to the commission.
- Establish additional committees as necessary.

The commission must meet at least annually, and all commission meetings must be open to the public, with public notice of the meetings provided in member states and on the commission website. However, the commission, executive committee, or another committee may convene in closed nonpublic meetings to discuss the noncompliance of a member state, personnel matters, current or prospective litigation, the negotiation of contracts, or other specified sensitive topics, such as those related to trade secrets or criminal investigations.

The commission must keep accurate accounts of all receipts and disbursements, which are subject to an annual audit that must be included in the commission's annual report. The commission may levy and collect an annual assessment from each member state or impose fees on other parties to pay any cost of its operations and activities each year that is not covered by other revenue sources.

The commission and its employees are individually and collectively immune from liability for damage or injury arising from an act or omission occurring within the scope of commission employment or responsibilities, except for intentional, willful, or wanton misconduct. The commission would have to defend, and indemnify, its employees in any such civil action.

Section 9: Data system

The commission must provide for the development, maintenance, and use of a coordinated data and reporting system that contains licensure, adverse action, and investigative information on all individuals licensed in member states. Member states must submit a uniform data set with the identifying information, licensure data (including reasons for licensure denials), adverse actions, current significant investigative information, and other relevant information regarding all individuals licensed in their state. Investigative information is available only to other member states. Member states can designate information that cannot be made public without that state's express permission. The commission must promptly notify all member states of any adverse action taken against a licensee or license applicant, and adverse action information regarding a licensee in any member state is available to any other member state.

Section 10: Rulemaking

The commission must develop and adopt rules, in accordance with the OTLC and the rules adopted under it, to effectively and efficiently implement the OTLC and achieve its purposes.

Rules must be adopted at a regular or special meeting of the commission, with notice and a request for comments provided in member states and on the commission website at least 30 days before the rule is to be voted on. The commission must make public any written materials submitted in response to proposed rules, and it must convene a public hearing, with opportunity for public comment, before adopting rules if requested to do so by at least 25 individuals, a state or federal governmental subdivision or agency, or an association that has at least 25 members. Final action on a proposed rule can be taken by majority vote of all commission members. The process for amending rules is the same as for adopting new ones.

If the commission determines that an emergency rule must be adopted immediately for one of the reasons described below, it can consider and adopt a rule without notice, opportunity for comment, or hearing, as long as the usual rulemaking procedures are applied within 90 days after the rule takes effect. An emergency rule can be adopted to do any of the following:

- Meet an imminent threat to public health, safety, or welfare.
- Protect public health and safety.
- Meet a deadline for adopting a rule that is required by federal law.
- Prevent a loss of fund of the commission or a member state or states.

If a majority of the legislatures of the member states reject a rule (by enactment of a statute or resolution in the same manner used to adopt the OTLC) within four years of the rule's adoption, the rule has no further force and effect.

Section 11: Oversight, dispute resolution, enforcement

All three branches of a member state's government must enforce the OTLC and take necessary actions to effectuate its purposes and intent. The OTLC and the rules developed and issued under it have standing as statutory law.

In any judicial or administrative proceeding in a member state that pertains to the subject matter of the OTLC and that may affect the powers, responsibilities, and actions of the commission, all of the following apply:

- The courts must take judicial notice of the OTLC and the rules.
- The commission is entitled to service of process in the proceeding. Failure to provide that service of process renders any judgment or order void with regard to the commission, the OTLC, or any rules developed and issued under the OTLC.
- The commission has standing to intervene in the proceeding for all purposes.

Upon request of a member state, the commission must attempt to resolve disputes related to the OTLC, both among member states and between member states and non-member states. The commission must develop and issue a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

The commission, in the reasonable exercise of its discretion, must enforce the OTLC and its rules. If the commission determines that a member state has defaulted in performing its obligations or responsibilities under the OTLC, the commission must provide to all member states written notice of the default, proposed remedies, and any other actions the commission will take, as well as providing remedial training and specific technical assistance regarding the default.

By majority vote, the commission may initiate legal action against a defaulting state to enforce compliance with the OTLC and its rules and bylaws. The action must be brought in the U.S. District Court for Washington, D.C., or the federal district where the commission has its principal offices. The relief sought may include both injunctive relief and damages.

As a last resort, after other means of securing compliance have been exhausted and notice has been given, a defaulting state can be terminated from the OTLC by majority vote of the member states. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of the termination. A defaulting state can appeal the action of the commission in the U.S. District Court for Washington, D.C., or the federal district where the commission has its principal offices.

In legal actions described above, the prevailing party must be awarded all costs of the litigation, including reasonable attorney fees.

The remedies described above are not the exclusive remedies available to the commission, which can pursue any other remedies available under state or federal law.

Section 12: Date of implementation, withdrawal, amendment

The OTLC provides that it takes effect when enacted in the tenth member state. (This has already happened.) Any state joining the OTLC after that time is subject to the rules of the commission as they exist on the date the OTLC becomes law in that state, and those rules have the full force and effect of law in that state.

A member state can withdraw from the OTLC by enacting a statute to repeal it. However, the withdrawal cannot take effect until six months after that repeal is enacted.

The OTLC can be amended by member states. An amendment must be enacted into law by all member states before it can be effective and binding on any member state.

Nothing in the OTLC invalidates or prevents an occupational therapy licensure or cooperative agreement between a member state and a non-member state as long as that agreement does not conflict with the OTLC.

Section 13: Construction and severability

The OTLC's provisions are severable, and if any part of it is held invalid, the applicability of the rest of it is not affected.

Section 14: Effect of compact and other laws

If a conflict exists between the OTLC and another state law, the OTLC controls and supersedes that other law to the extent of the conflict. However, a conflict between the OTLC and the constitution of a member state is resolved, in that state only, in favor of the state constitution.

All lawful actions of the commission, including the rules and bylaws it develops and issues, are binding on member states, and agreements between the commission and member states are binding in accordance with their terms.

A licensee providing occupational therapy in a remote state under the compact privilege must function within the laws and regulations of the remote state.

Proposed MCL 333.16188

House Bill 4104 would amend the occupational therapy provisions of the Public Health Code to allow individuals authorized under the OTLC to engage in the practice of occupational therapy or to practice as an occupational therapy assistant. Currently, only individuals licensed in Michigan under Part 183 (Occupational Therapy) of the code may do so. The bill would provide that, for purposes of Article 15 (Occupations) of the code, including the obligations of licensure, an individual who holds a compact privilege under the OTLC to practice as an occupational therapist or an occupational therapy assistant is considered an occupational therapist or an occupational therapy assistant, as applicable, who is licensed under Part 183. The fee for an individual seeking to hold a compact privilege under the OTLC would be \$75 per year.

The bill also would require the Michigan Board of Occupational Therapists to select the director of LARA as the state's delegate for purposes of the OTLC.

MCL 333.16345, 333.18301, and 333.18305 and proposed MCL 333.18303a and 333.18303b

Each bill would take effect one year after being enacted, and neither could take effect unless both were enacted.

BACKGROUND:

Occupational therapy is centered on the tasks and activities a person performs every day (their occupations) and involves the “use of self-care and work and play activities to promote and maintain health, prevent disability, increase independent function, and enhance development.”³ It is therapy “designed to help patients gain or relearn skills needed for activities of daily living, including self-care, handwriting and other school-related skills, and work-related skills,” in which “patients may do exercises, manipulate items to help develop normal hand motion, or learn to use assistive devices, among other activities.”⁴

The OTLC is a joint initiative of the American Occupational Therapy Association (AOTA) and the National Board for Certification in Occupation Therapy, Inc. (NBCOT).⁵ According to the OTLC website, 31 states have joined the compact as of March 2025.⁶

Michigan has joined two other interstate health licensure portability compacts, the Psychology Interjurisdictional Compact⁷ and the Interstate Medical Licensure Compact (which applies to physicians and will be repealed on March 28, 2025).⁸ Others recently proposed include the Nurse Licensure Compact⁹ and the Physical Therapy Licensure Compact.¹⁰

³ <https://www.britannica.com/science/occupational-therapy>

⁴ *Webster's New World Medical Dictionary*. 3rd ed. Wiley Publishing, 2008.

⁵ <https://otcompact.org/wp-content/uploads/2020/11/Licensure-Compact-OT-Practice-Article-with-copyright.pdf>

⁶ <https://otcompact.org/compact-map/>

⁷ <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-333-16190>

⁸ <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-333-16189>

⁹ <https://www.legislature.mi.gov/Bills/Bill?ObjectName=2019-HB-4042>

¹⁰ <https://www.legislature.mi.gov/Bills/Bill?ObjectName=2025-HB-4101>

The bills are similar to House Bills 4169 and 4170 of the 2023-24 legislative session, which were passed by the House of Representatives.

FISCAL IMPACT:

House Bills 4103 and 4104 could have a significant fiscal impact on the Department of Licensing and Regulatory Affairs, although a precise estimate of the magnitude of the impact is currently unavailable. Under House Bill 4103, LARA would incur costs for investigating complaints against licensees and for the general administration and implementation of the compact's requirements; such costs would include any incurred expenses for integrating Michigan's current data system with the compact commission's data system. The Occupational Therapy Compact Commission could also levy an annual assessment on Michigan (such an assessment is levied on all compact members), to cover the costs of the commission's activities and operations. The magnitude of the costs is presently unknown, as LARA indicated that the cost would be dependent on the volume of compact licensees that practice within Michigan. The state would also face liabilities if it defaulted on the compact.

The bills would allow LARA to recover some of its costs, namely via fines on licensees related to adverse disciplinary action and cost recovery related to investigations and dispositions of adverse action cases. House Bill 4104 would require LARA to collect an annual fee of \$75 from individuals seeking to hold compact privilege under the occupational therapy licensure compact. It is unclear how revenues under the bill would compare to the costs that LARA and the state would incur.

Furthermore, LARA indicated that traditional licensure revenues in the state would likely decline, as out-of-state licensees would be able to practice via the compact, instead of securing licensure through the state.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.