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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2019

SESSION LAW 2020-82

SENATE BILL 361

AN ACT TO ENACT THE PSYCHOLOGY INTERJURISDICTIONAL COMPACT, ALLOW LICENSED MARRIAGE AND FAMILY THERAPISTS TO CONDUCT FIRST-LEVEL COMMITMENT EXAMINATIONS, ELIMINATE REDUNDANCY IN ADULT CARE HOME INSPECTIONS, ENSURE THE PROPER ADMINISTRATION OF STEP THERAPY PROTOCOLS, AND CLARIFY THE USE OF CORONAVIRUS RELIEF FUNDS ALLOCATED TO THE NORTH CAROLINA COMMUNITY HEALTH CENTER ASSOCIATION.

The General Assembly of North Carolina enacts:

PART I. PSYCHOLOGY INTERJURISDICTIONAL LICENSURE COMPACT

SECTION 1.(a) Article 18A of Chapter 90 of the General Statutes, G.S. 90-270.1 through G.S. 90-270.22, is recodified as Article 18G of Chapter 90 of the General Statutes, G.S. 90-270.135 through G.S. 90-270.159.

SECTION 1.(b) Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 18H.

"Psychology Interjurisdictional Licensure Compact.

"§ 90-270.160. Purpose.

This Compact is designed to achieve the following purposes and objectives:

(1) Increase public access to professional psychological services by allowing for telepsychological practice across state lines as well as temporary in-person, face-to-face services into a state which the psychologist is not licensed to practice psychology.

(2) Enhance the states' ability to protect the public's health and safety, especially client/patient safety.

(3) Encourage the cooperation of Compact States in the areas of psychology licensure and regulation.

(4) Facilitate the exchange of information between Compact States regarding psychologist licensure, adverse actions, and disciplinary history.

(5) Promote compliance with the laws governing psychological practice in each Compact State.

(6) Invest all Compact States with the authority to hold licensed psychologists accountable through the mutual recognition of Compact State licenses.

"§ 90-270.161. Definitions.

(1) Adverse action. – Any action taken by a State Psychology Regulatory Authority which finds a violation of a statute or regulation that is identified by the State Psychology Regulatory Authority as discipline and is a matter of public record.

(2) Association of State and Provincial Psychology Boards (ASPPB). – The recognized membership organization composed of State and Provincial Psychology Regulatory Authorities responsible for the licensure and registration of psychologists throughout the United States and Canada.

(3) Authority to Practice Interjurisdictional Telepsychology. – A licensed psychologist's authority to practice telepsychology, within the limits authorized under this Compact, in another Compact State.

(4) Bylaws. – Those Bylaws established by the Psychology Interjurisdictional Compact Commission pursuant to G.S. 90-270.169 for its governance or for directing and controlling its actions and conduct.

(5) Client/patient. – The recipient of psychological services, whether psychological services are delivered in the context of health care, corporate, supervision, and/or consulting services.

(6) Commissioner. – The voting representative appointed by each State Psychology Regulatory Authority pursuant to G.S. 90-270.169.

(7) Compact State. – A state, the District of Columbia, or United States territory that has enacted this Compact legislation and which has not withdrawn pursuant to G.S. 90-270.172(c) or been terminated pursuant to G.S. 90-270.171(b).

(8) Confidentiality. – The principle that data or information is not made available or disclosed to unauthorized persons and/or processes.

(9) Coordinated Licensure Information System or Coordinated Database. – An integrated process for collecting, storing, and sharing information on psychologists' licensure and enforcement activities related to psychology licensure laws, which is administered by the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities.

(10) Day. – Any part of a day in which psychological work is performed.

(11) Distant State. – The Compact State where a psychologist is physically present (not through the use of telecommunications technologies) to provide temporary in-person, face-to-face psychological services.

(12) E.Passport. – A certificate issued by the Association of State and Provincial Psychology Boards (ASPPB) that promotes the standardization in the criteria of interjurisdictional telepsychology practice and facilitates the process for licensed psychologists to provide telepsychological services across state lines.

(13) Executive Board. – A group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

(14) Home State. – A Compact State where a psychologist is licensed to practice psychology. If the psychologist is licensed in more than one Compact State and is practicing under the Authority to Practice Interjurisdictional Telepsychology, the Home State is the Compact State where the psychologist is physically present when the telepsychological services are delivered. If the psychologist is licensed in more than one Compact State and is practicing under the Temporary Authorization to Practice, the Home State is any Compact State where the psychologist is licensed.

(15) Identity History Summary. – A summary of information retained by the FBI, or other designee with similar authority, in connection with arrests and, in some instances, federal employment, naturalization, or military service.

(16) In-person, face-to-face. – Interactions in which the psychologist and the client/patient are in the same physical space and which does not include interactions that may occur through the use of telecommunication technologies.

(17) Interjurisdictional Practice Certificate (IPC). – A certificate issued by the Association of State and Provincial Psychology Boards (ASPPB) that grants temporary authority to practice based on notification to the State Psychology Regulatory Authority of intention to practice temporarily and verification of one's qualifications for such practice.

(18) License. – Authorization by a State Psychology Regulatory Authority to engage in the independent practice of psychology, which would be unlawful without the authorization.

(19) Non-Compact State. – Any State which is not at the time a Compact State.

(20) Psychologist. – An individual licensed for the independent practice of psychology.

(21) Psychology Interjurisdictional Compact Commission (Commission). – The national administration of which all Compact States are members.

(22) Receiving State. – A Compact State where the client/patient is physically located when the telepsychological services are delivered.

(23) Rule. – A written statement by the Psychology Interjurisdictional Compact Commission promulgated pursuant to G.S. 90-270.170 of the Compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission and has the force and effect of statutory law in a Compact State, and includes the amendment, repeal, or suspension of an existing rule.

(24) Significant investigatory information. –

a. Investigative information that a State Psychology Regulatory Authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proven true, would indicate more than a violation of state statute or ethics code that would be considered more substantial than minor infraction; or

b. Investigative information that indicates that the psychologist represents an immediate threat to public health and safety regardless of whether the psychologist has been notified and/or had an opportunity to respond.

(25) State. – A state, commonwealth, territory, or possession of the United States or the District of Columbia.

(26) State Psychology Regulatory Authority. – The Board, office, or other agency with the legislative mandate to license and regulate the practice of psychology.

(27) Telepsychology. – The provision of psychological services using telecommunication technologies.

(28) Temporary Authorization to Practice. – A licensed psychologist's authority to conduct temporary in-person, face-to-face practice, within the limits authorized under this Compact, in another Compact State.

(29) Temporary in-person, face-to-face practice. – Where a psychologist is physically present (not through the use of telecommunications technologies) in the Distant State to provide for the practice of psychology for 30 days within a calendar year and based on notification to the Distant State.

"§ 90-270.162. Home State licensure.

(a) The Home State shall be a Compact State where a psychologist is licensed to practice psychology.

(b) A psychologist may hold one or more Compact State licenses at a time. If the psychologist is licensed in more than one Compact State, the Home State is the Compact State where the psychologist is physically present when the services are delivered as authorized by the Authority to Practice Interjurisdictional Telepsychology under the terms of this Compact.

(c) Any Compact State may require a psychologist not previously licensed in a Compact State to obtain and retain a license to be authorized to practice in the Compact State under circumstances not authorized by the Authority to Practice Interjurisdictional Telepsychology under the terms of this Compact.

(d) Any Compact State may require a psychologist to obtain and retain a license to be authorized to practice in a Compact State under circumstances not authorized by Temporary Authorization to Practice under the terms of this Compact.

(e) A Home State's license authorizes a psychologist to practice in a Receiving State under the Authority to Practice Interjurisdictional Telepsychology only if the Compact State:

(1) Currently requires the psychologist to hold an active E.Passport;

(2) Has a mechanism in place for receiving and investigating complaints about licensed individuals;

(3) Notifies the Commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding a licensed individual;

(4) Requires an Identity History Summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation (FBI), or other designee with similar authority, no later than 10 years after activation of the Compact; and

(5) Complies with the Bylaws and Rules of the Commission.

(f) A Home State's license grants Temporary Authorization to Practice to a psychologist in a Distant State only if the Compact State:

(1) Currently requires the psychologist to hold an active IPC;

(2) Has a mechanism in place for receiving and investigating complaints about licensed individuals;

(3) Notifies the Commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding a licensed individual;

(4) Requires an Identity History Summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation (FBI), or other designee with similar authority, no later than 10 years after activation of the Compact; and

(5) Complies with the Bylaws and Rules of the Commission.

"§ 90-270.163. Compact privilege to practice telepsychology.

(a) Compact States shall recognize the right of a psychologist, licensed in a Compact State in conformance with G.S. 90-270.162, to practice telepsychology in other Compact States (Receiving States) in which the psychologist is not licensed, under the Authority to Practice Interjurisdictional Telepsychology as provided in the Compact.

(b) To exercise the Authority to Practice Interjurisdictional Telepsychology under the terms and provisions of this Compact, a psychologist licensed to practice in a Compact State must:

(1) Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:

a. Regionally accredited by an accrediting body recognized by the U.S. Department of Education to grant graduate degrees, or authorized by Provincial Statute or Royal Charter to grant doctoral degrees; or

b. A foreign college or university deemed to be equivalent to sub-subdivision a. of this subdivision by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) or by a recognized foreign credential evaluation service; and

(2) Hold a graduate degree in psychology that meets the following criteria:

a. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;

b. The psychology program must stand as a recognizable, coherent, organizational entity within the institution;

c. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

d. The program must consist of an integrated, organized sequence of study;

e. There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

f. The designated director of the program must be a psychologist and a member of the core faculty;

g. The program must have an identifiable body of students who are matriculated in that program for a degree;

h. The program must include supervised practicum, internship, or field training appropriate to the practice of psychology;

i. The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degree and a minimum of one academic year of full-time graduate study for master's degree;

j. The program includes an acceptable residency as defined by the Rules of the Commission.

(3) Possess a current, full, and unrestricted license to practice psychology in a Home State that is a Compact State;

(4) Have no history of adverse action that violates the Rules of the Commission;

(5) Have no criminal record history reported on an Identity History Summary that violates the Rules of the Commission;

(6) Possess a current, active E.Passport;

(7) Provide attestations in regard to areas of intended practice, conformity with standards of practice, competence in telepsychology technology, criminal background, and knowledge and adherence to legal requirements in the home and receiving states, and provide a release of information to allow for primary source verification in a manner specified by the Commission; and

(8) Meet other criteria as defined by the Rules of the Commission.

(c) The Home State maintains authority over the license of any psychologist practicing into a Receiving State under the Authority to Practice Interjurisdictional Telepsychology.

(d) A psychologist practicing in a Receiving State under the Authority to Practice Interjurisdictional Telepsychology will be subject to the Receiving State's scope of practice. A Receiving State may, in accordance with that state's due process law, limit or revoke a psychologist's Authority to Practice Interjurisdictional Telepsychology in the Receiving State and may take any other necessary actions under the Receiving State's applicable law to protect the health and safety of the Receiving State's citizens. If a Receiving State takes action, the state shall promptly notify the Home State and the Commission.

(e) If a psychologist's license in any Home State, another Compact State, or any Authority to Practice Interjurisdictional Telepsychology in any Receiving State is restricted, suspended, or otherwise limited, the E.Passport shall be revoked and, therefore, the psychologist shall not be eligible to practice telepsychology in a Compact State under the Authority to Practice Interjurisdictional Telepsychology.

"§ 90-270.164. Compact Temporary Authorization to Practice.

(a) Compact States shall also recognize the right of a psychologist, licensed in a Compact State in conformance with G.S. 90-270.162, to practice temporarily in other Compact States (Distant States) in which the psychologist is not licensed, as provided in the Compact.

(b) To exercise the Temporary Authorization to Practice under the terms and provisions of this Compact, a psychologist licensed to practice in a Compact State must:

(1) Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:

a. Regionally accredited by an accrediting body recognized by the U.S. Department of Education to grant graduate degrees, or authorized by Provincial Statute or Royal Charter to grant doctoral degrees; or

b. A foreign college or university deemed to be equivalent to sub-subdivision a. of this subdivision by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) or by a recognized foreign credential evaluation service; and

(2) Hold a graduate degree in psychology that meets the following criteria:

a. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;

b. The psychology program must stand as a recognizable, coherent, organizational entity within the institution;

c. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

d. The program must consist of an integrated, organized sequence of study;

e. There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

f. The designated director of the program must be a psychologist and a member of the core faculty;

g. The program must have an identifiable body of students who are matriculated in that program for a degree;

h. The program must include supervised practicum, internship, or field training appropriate to the practice of psychology;

i. The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degrees and a minimum of one academic year of full-time graduate study for master's degrees;

j. The program includes an acceptable residency as defined by the Rules of the Commission.

(3) Possess a current, full, and unrestricted license to practice psychology in a Home State that is a Compact State;

(4) No history of adverse action that violates the Rules of the Commission;

(5) No criminal record history that violates the Rules of the Commission;

(6) Possess a current, active IPC;

(7) Provide attestations in regard to areas of intended practice and work experience and provide a release of information to allow for primary source verification in a manner specified by the Commission; and

(8) Meet other criteria as defined by the Rules of the Commission.

(c) A psychologist practicing into a Distant State under the Temporary Authorization to Practice shall practice within the scope of practice authorized by the Distant State.

(d) A psychologist practicing into a Distant State under the Temporary Authorization to Practice will be subject to the Distant State's authority and law. A Distant State may, in accordance with that state's due process law, limit or revoke a psychologist's Temporary Authorization to Practice in the Distant State and may take any other necessary actions under the Distant State's applicable law to protect the health and safety of the Distant State's citizens. If a Distant State takes action, the state shall promptly notify the Home State and the Commission.

(e) If a psychologist's license in any Home State, another Compact State, or any Temporary Authorization to Practice in any Distant State is restricted, suspended, or otherwise limited, the IPC shall be revoked and therefore the psychologist shall not be eligible to practice in a Compact State under the Temporary Authorization to Practice.

"§ 90-270.165. Conditions of telepsychology practice in a Receiving State.

A psychologist may practice in a Receiving State under the Authority to Practice Interjurisdictional Telepsychology only in the performance of the scope of practice for psychology as assigned by an appropriate State Psychology Regulatory Authority, as defined in the Rules of the Commission, and under the following circumstances:

(1) The psychologist initiates a client/patient contact in a Home State via telecommunications technologies with a client/patient in a Receiving State.

(2) Other conditions regarding telepsychology as determined by Rules promulgated by the Commission.

"§ 90-270.166. Adverse actions.

(a) A Home State shall have the power to impose adverse action against a psychologist's license issued by the Home State. A Distant State shall have the power to take adverse action on a psychologist's Temporary Authorization to Practice within that Distant State.

(b) A Receiving State may take adverse action on a psychologist's Authority to Practice Interjurisdictional Telepsychology within that Receiving State. A Home State may take adverse action against a psychologist based on an adverse action taken by a Distant State regarding temporary in-person, face-to-face practice.

(c) If a Home State takes adverse action against a psychologist's license, that psychologist's Authority to Practice Interjurisdictional Telepsychology is terminated and the E.Passport is revoked. Furthermore, that psychologist's Temporary Authorization to Practice is terminated and the IPC is revoked.

(1) All Home State disciplinary orders which impose adverse action shall be reported to the Commission in accordance with the Rules promulgated by the Commission. A Compact State shall report adverse actions in accordance with the Rules of the Commission.

(2) In the event discipline is reported on a psychologist, the psychologist will not be eligible for telepsychology or temporary in-person, face-to-face practice in accordance with the Rules of the Commission.

(3) Other actions may be imposed as determined by the Rules promulgated by the Commission.

(d) A Home State's Psychology Regulatory Authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a licensee which occurred in a Receiving State as it would if such conduct had occurred by a licensee within the Home State. In such cases, the Home State's law shall control in determining any adverse action against a psychologist's license.

(e) A Distant State's Psychology Regulatory Authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a psychologist practicing under Temporary Authorization to Practice which occurred in that Distant State as it would if such conduct had occurred by a licensee within the Home State. In such cases, Distant State's law shall control in determining any adverse action against a psychologist's Temporary Authorization to Practice.

(f) Nothing in this Compact shall override a Compact State's decision that a psychologist's participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the Compact State's law. Compact States must require psychologists who enter any alternative programs to not provide telepsychology services under the Authority to Practice Interjurisdictional Telepsychology or provide temporary psychological services under the Temporary Authorization to Practice in any other Compact State during the term of the alternative program.

(g) No other judicial or administrative remedies shall be available to a psychologist in the event a Compact State imposes an adverse action pursuant to subsection (c) of this section.

"§ 90-270.167. Additional authorities invested in a Compact State's Psychology Regulatory Authority.

In addition to any other powers granted under state law, a Compact State's Psychology Regulatory Authority shall have the authority under this Compact to:

(1) Issue subpoenas, for both hearings and investigations, which require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a Compact State's Psychology Regulatory Authority for the attendance and testimony of witnesses and/or the production of evidence from another Compact State shall be enforced in the latter state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing State Psychology Regulatory Authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located.

(2) Issue cease and desist and/or injunctive relief orders to revoke a psychologist's Authority to Practice Interjurisdictional Telepsychology and/or Temporary Authorization to Practice.

(3) During the course of any investigation, a psychologist may not change his/her Home State licensure. A Home State Psychology Regulatory Authority is authorized to complete any pending investigations of a psychologist and to take any actions appropriate under its law. The Home State Psychology Regulatory Authority shall promptly report the conclusions of such investigations to the Commission. Once an investigation has been completed, and pending the outcome of said investigation, the psychologist may change his/her Home State licensure. The Commission shall promptly notify the new Home State of any such decisions as provided in the Rules of the Commission. All information provided to the Commission or distributed by Compact States pursuant to the psychologist shall be confidential, filed under seal, and used for investigatory or disciplinary matters. The Commission may create additional rules for mandated or discretionary sharing of information by Compact States.

"§ 90-270.168. Coordinated Licensure Information System.

(a) The Commission shall provide for the development and maintenance of a Coordinated Licensure Information System (Coordinated Database) and reporting system containing licensure and disciplinary action information on all psychologists to whom this Compact is applicable in all Compact States as defined by the Rules of the Commission.

(b) Notwithstanding any other provision of state law to the contrary, a Compact State shall submit a uniform data set to the Coordinated Database on all licensees as required by the Rules of the Commission, including:

(1) Identifying information;

(2) Licensure data;

(3) Significant investigatory information;

(4) Adverse actions against a psychologist's license;

(5) An indicator that a psychologist's Authority to Practice Interjurisdictional Telepsychology and/or Temporary Authorization to Practice is revoked;

(6) Nonconfidential information related to alternative program participation information;

(7) Any denial of application for licensure and the reasons for such denial; and

(8) Other information which may facilitate the administration of this Compact, as determined by the Rules of the Commission.

(c) The Coordinated Database administrator shall promptly notify all Compact States of any adverse action taken against, or significant investigative information on, any licensee in a Compact State.

(d) Compact States reporting information to the Coordinated Database may designate information that may not be shared with the public without the express permission of the Compact State reporting the information.

(e) Any information submitted to the Coordinated Database that is subsequently required to be expunged by the law of the Compact State reporting the information shall be removed from the Coordinated Database.

"§ 90-270.169. Establishment of the Psychology Interjurisdictional Compact Commission.

(a) The Compact States hereby create and establish a joint public agency known as the Psychology Interjurisdictional Compact Commission.

(1) The Commission is a body politic and an instrumentality of the Compact States.

(2) Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

(3) Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

(b) Membership, Voting, and Meetings. –

(1) The Commission shall consist of one voting representative appointed by each Compact State who shall serve as that state's Commissioner. The State Psychology Regulatory Authority shall appoint its delegate. This delegate shall be empowered to act on behalf of the Compact State. This delegate shall be limited to:

a. Executive Director, Executive Secretary, or similar executive;

b. Current member of the State Psychology Regulatory Authority of a Compact State; or

c. Designee empowered with the appropriate delegate authority to act on behalf of the Compact State.

(2) Any Commissioner may be removed or suspended from office as provided by the law of the state from which the Commissioner is appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the Compact State in which the vacancy exists.

(3) Each Commissioner shall be entitled to one vote with regard to the promulgation of Rules and creation of Bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. A Commissioner shall vote in person or by such other means as provided in the Bylaws. The Bylaws may provide for Commissioners' participation in meetings by telephone or other means of communication.

(4) The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the Bylaws.

(5) All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rule-making provisions in G.S. 90-270.170.

(6) The Commission may convene in a closed, nonpublic meeting if the Commission must discuss:

a. Noncompliance of a Compact State with its obligations under the Compact;

b. The employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation against the Commission;

d. Negotiation of contracts for the purchase or sale of goods, services, or real estate;

e. Accusation against any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information which is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigatory records compiled for law enforcement purposes;

i. Disclosure of information related to any investigatory reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility for investigation or determination of compliance issues pursuant to the Compact; or

j. Matters specifically exempted from disclosure by federal and state statute.

(7) If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The Commission shall keep minutes which fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, of any person participating in the meeting, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release only by a majority vote of the Commission or order of a court of competent jurisdiction.

(c) The Commission shall, by a majority vote of the Commissioners, prescribe Bylaws and/or Rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the Compact, including, but not limited to:

(1) Establishing the fiscal year of the Commission;

(2) Providing reasonable standards and procedures:

a. For the establishment and meetings of other committees; and

b. Governing any general or specific delegation of any authority or function of the Commission;

(3) Providing reasonable procedures for calling and conducting meetings of the Commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals of such proceedings, and proprietary information, including trade secrets. The Commission may meet in closed session only after a majority of the Commissioners vote to close a meeting to the public in whole or in part. As soon as practicable, the Commission must make public a copy of the vote to close the meeting revealing the vote of each Commissioner with no proxy votes allowed;

(4) Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the Commission;

(5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar law of any Compact State, the Bylaws shall exclusively govern the personnel policies and programs of the Commission;

(6) Promulgating a Code of Ethics to address permissible and prohibited activities of Commission members and employees;

(7) Providing a mechanism for concluding the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment and/or reserving of all of its debts and obligations;

(8) The Commission shall publish its Bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the Compact States;

(9) The Commission shall maintain its financial records in accordance with the Bylaws; and

(10) The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the Bylaws.

(d) The Commission shall have the following powers:

(1) The authority to promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all Compact States;

(2) To bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any State Psychology Regulatory Authority or other regulatory body responsible for psychology licensure to sue or be sued under applicable law shall not be affected;

(3) To purchase and maintain insurance and bonds;

(4) To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a Compact State;

(5) To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

(6) To accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services and to receive, utilize, and dispose of the same, provided that at all times the Commission shall strive to avoid any appearance of impropriety and/or conflict of interest;

(7) To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed, provided that at all times the Commission shall strive to avoid any appearance of impropriety;

(8) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(9) To establish a budget and make expenditures;

(10) To borrow money;

(11) To appoint committees, including advisory committees comprised of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the

Bylaws;

(12) To provide and receive information from, and to cooperate with, law enforcement agencies;

(13) To adopt and use an official seal; and

(14) To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of psychology licensure, temporary in-person, face-to-face practice, and telepsychology practice.

(e) The Executive Board. – The elected officers shall serve as the Executive Board, which shall have the power to act on behalf of the Commission according to the terms of this Compact.

(1) The Executive Board shall be comprised of six members:

a. Five voting members who are elected from the current membership of the Commission by the Commission.

b. One ex officio, nonvoting member from the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities.

(2) The ex officio member must have served as staff or member on a State Psychology Regulatory Authority and will be selected by its respective organization.

(3) The Commission may remove any member of the Executive Board as provided in Bylaws.

(4) The Executive Board shall meet at least annually.

(5) The Executive Board shall have the following duties and responsibilities:

a. Recommend to the entire Commission changes to the Rules or Bylaws, changes to this Compact legislation, or fees paid by Compact States such as annual dues and any other applicable fees;

b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of member states and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Other duties as provided in Rules or Bylaws.

(f) Financing of the Commission. –

(1) The Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

(3) The Commission may levy on and collect an annual assessment from each Compact State or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. 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 Compact States.

(4) The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same, nor shall the Commission pledge the credit of any of the Compact States, except by and with the authority of the Compact State.

(5) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its Bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

(g) Qualified Immunity, Defense, and Indemnification. –

(1) The members, officers, Executive Director, employees, and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that nothing in this subdivision shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

(2) The Commission shall defend any member, officer, Executive Director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel, and provided further that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

(3) The Commission shall indemnify and hold harmless any member, officer, Executive Director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

"§ 90-270.170. Rule making.

(a) The Commission shall exercise its rule-making powers pursuant to the criteria set forth in this section and the Rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

(b) If a majority of the legislatures of the Compact States rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact, then such rule shall have no further force and effect in any Compact State.

(c) Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

(d) Prior to promulgation and adoption of a final rule or Rules by the Commission, and at least 60 days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rule Making:

(1) On the Web site of the Commission; and

(2) On the Web site of each Compact States' Psychology Regulatory Authority or the publication in which each state would otherwise publish proposed rules.

(e) The Notice of Proposed Rule Making shall include:

(1) The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

(2) The text of the proposed rule or amendment and the reason for the proposed rule;

(3) A request for comments on the proposed rule from any interested person; and

(4) The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

(f) Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

(g) The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

(1) At least 25 persons who submit comments independently of each other;

(2) A governmental subdivision or agency; or

(3) A duly appointed person in an association that has at least 25 members.

(h) If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing.

(1) All persons wishing to be heard at the hearing shall notify the Executive Director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

(2) Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

(3) No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the Commission from making a transcript or recording of the hearing if it so chooses.

(4) Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

(i) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

(j) The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rule-making record and the full text of the rule.

(k) If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

(*l*) Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rule-making procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

(1) Meet an imminent threat to public health, safety, or welfare;

(2) Prevent a loss of Commission or Compact State funds;

(3) Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

(4) Protect public health and safety.

(m) The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the Web site of the Commission. The revision shall be subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the Chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

"§ 90-270.171. Oversight, dispute resolution, and enforcement.

(a) Oversight. –

(1) The executive, legislative, and judicial branches of state government in each Compact State shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the rules promulgated hereunder shall have standing as statutory law.

(2) All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a Compact State pertaining to the subject matter of this Compact which may affect the powers, responsibilities, or actions of the Commission.

(3) The Commission shall be entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated rules.

(b) Default, Technical Assistance, and Termination. –

(1) If the Commission determines that a Compact State has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:

a. Provide written notice to the defaulting state and other Compact States of the nature of the default, the proposed means of remedying the default, and/or any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

(2) If a state in default fails to remedy the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the Compact States and all rights, privileges, and benefits conferred by this Compact shall be terminated on the effective date of termination. A remedy of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(3) Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be submitted by the Commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the Compact States.

(4) A Compact State which has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations which extend beyond the effective date of termination.

(5) The Commission shall not bear any costs incurred by the state which is found to be in default or which has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.

(6) The defaulting state may appeal the action of the Commission by petitioning the United States District Court for the State of Georgia or the federal district where the Compact has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorneys' fees.

(c) Dispute Resolution. –

(1) Upon request by a Compact State, the Commission shall attempt to resolve disputes related to the Compact which arise among Compact States and between Compact and Non-Compact States.

(2) The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes that arise before the Commission.

(d) Enforcement. –

(1) The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and Rules of this Compact.

(2) By majority vote, the Commission may initiate legal action in the United States District Court for the State of Georgia or the federal district where the Compact has its principal offices against a Compact State in default to enforce compliance with the provisions of the Compact and its promulgated Rules and Bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorneys' fees.

(3) The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

"§ 90-270.172. Date of implementation of the Psychology Interjurisdictional Compact Commission and associated rules, withdrawal, and amendments.

(a) The Compact shall come into effect on the date on which the Compact is enacted into law in the seventh Compact State. The provisions which become effective at that time shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rule-making powers necessary to the implementation and administration of the Compact.

(b) Any state which joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule which has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.

(c) Any Compact State may withdraw from this Compact by enacting a statute repealing the same.

(1) A Compact State's withdrawal shall not take effect until six months after enactment of the repealing statute.

(2) Withdrawal shall not affect the continuing requirement of the withdrawing State's Psychology Regulatory Authority to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

(d) Nothing contained in this Compact shall be construed to invalidate or prevent any psychology licensure agreement or other cooperative arrangement between a Compact State and a Non-Compact State which does not conflict with the provisions of this Compact.

(e) This Compact may be amended by the Compact States. No amendment to this Compact shall become effective and binding upon any Compact State until it is enacted into the law of all Compact States.

"§ 90-270.173. Construction and severability.

This Compact shall be liberally construed so as to effectuate the purposes thereof. If this Compact shall be held contrary to the constitution of any state member thereto, the Compact shall remain in full force and effect as to the remaining Compact States."

SECTION 1.(c) This section becomes effective March 1, 2021.

PART II. ALLOW LICENSED MARRIAGE AND FAMILY THERAPISTS TO CONDUCT FIRST-LEVEL EXAMINATIONS FOR INVOLUNTARY COMMITMENT

SECTION 2.(a) G.S. 122C-263.1(a) reads as rewritten:

"§ 122C-263.1. Secretary's authority to certify commitment examiners; training of certified commitment examiners performing first examinations; LME/MCO responsibilities.

(a) Physicians and eligible psychologists are qualified to perform the commitment examinations required under G.S. 122C-263(c) and G.S. 122C-283(c). The Secretary of Health and Human Services may individually certify to perform the first commitment examinations required by G.S. 122C-261 through G.S. 122C-263 and G.S. 122C-281 through G.S. 122C-283 other health, mental health, and substance abuse professionals whose scope of practice includes diagnosing and documenting psychiatric or substance use disorders and conducting mental status examinations to determine capacity to give informed consent to treatment as follows:

(1) The Secretary has received a request:

a. To certify a licensed clinical social worker, a master's or higher level degree nurse practitioner, a licensed professional counsellor, a licensed marriage and family therapist, or a physician's assistant to conduct the first examinations described in G.S. 122C-263(c) and G.S. 122C-283(c).

b. To certify a master's level licensed clinical addictions specialist to conduct the first examination described in G.S. 122C-283(c).

...

(5) In no event shall the certification of a licensed clinical social worker, master's or higher level degree nurse practitioner, licensed professional counsellor, a licensed marriage and family therapist, physician assistant, or master's level certified clinical addictions specialist under this section be construed as authorization to expand the scope of practice of the licensed clinical social worker, the master's level nurse practitioner, licensed professional counsellor, a licensed marriage and family therapist, physician assistant, or the master's level certified clinical addictions specialist.

...

(9) A licensed marriage and family therapist shall not be authorized to conduct the initial examination of an individual married to a patient of the licensed marriage and family therapist."

SECTION 2.(b) This section becomes effective October 1, 2020.

PART III. ELIMINATE REDUNDANCY IN ADULT CARE HOME INSPECTIONS

SECTION 3. G.S. 131D-2.11(a) reads as rewritten:

"(a) State Inspection and Monitoring. – The Department shall ensure that adult care homes required to be licensed by this Article are monitored for licensure compliance on a regular basis. All facilities licensed under this Article and adult care units in nursing homes are subject to inspections at all times by the Secretary. Except as provided in subsection (a1) of this section, the Division of Health Service Regulation shall inspect all adult care homes and adult care units in nursing homes on an annual basis. Beginning July 1, 2012, the Division of Health Service Regulation shall include as part of its inspection of all adult care homes a review of the facility's compliance with G.S. 131D-4.4A(b) and safe practices for injections and any other procedures during which bleeding typically occurs. In addition, the Department shall ensure that adult care homes are inspected every two years to determine compliance with physical plant and life-safety requirements.

If the annual or biennial licensure inspection of an adult care home is conducted separately from the inspection required every two years to determine compliance with physical plant and life-safety requirements, then the Division of Health Service Regulation shall not cite, as part of the annual or biennial licensure inspection, any noncompliance with any law or regulation that was cited during a physical plant and life-safety inspection, unless, in consultation with the section within the Division of Health Service Regulation that conducts physical plant and life-safety inspections, any of the following conditions are met:

(1) The noncompliance with the law or regulation continues and the noncompliance constitutes a Type A1 Violation, a Type A2 Violation, or a Type B Violation, as defined in G.S. 131D-34.

(2) The facility has not submitted a plan of correction for the physical plant or life-safety citation that has been accepted by the section within the Division of Health Service Regulation that conducts physical plant and life-safety inspections.

(3) The noncompliance with the physical plant or life-safety law and regulation cited by the section within the Division of Health Service Regulation that conducts physical plant and life-safety inspections has not been corrected within the time frame allowed for correction or has increased in severity.

Nothing in this subsection prevents a licensing inspector from referring a concern about physical plant and life-safety requirements to the section within the Division of Health Service Regulation that conducts physical plant and life-safety inspections."

PART IV. STEP THERAPY PROTOCOLS

SECTION 4.(a) G.S. 58-3-221 reads as rewritten:

"§ 58-3-221. Access to nonformulary and restricted access prescription drugs.

(a) If an insurer (i) maintains one or more closed formularies for or restricts access to covered prescription drugs or ~~devices,~~ devices or (ii) requires an enrollee in a plan with an open or closed formulary to use a prescription drug or sequence of prescription drugs, other than the drug the enrollee's health care provider recommends, before the insurer provides coverage for the recommended prescription drug, then the insurer shall do all of the following:

(1) Develop the ~~formulary or~~ formularies or protocols and any restrictions on access to covered prescription drugs or devices in consultation with and with the approval of a pharmacy and therapeutics ~~committee, which shall include participating physicians who are licensed to practice medicine in this State.~~ committee.

(2) Make available to participating providers, pharmacists, and enrollees the complete drugs or devices formulary or formularies maintained by the insurer including a list of the devices and prescription drugs on the formulary by major therapeutic category that specifies whether a particular drug or device is preferred over other drugs or ~~devices.~~ devices, as well as any utilization management program indicators.

(3) ~~Establish and maintain an expeditious process or procedure that allows an enrollee or the enrollee's physician acting on behalf of the enrollee to obtain, without penalty or additional cost-sharing beyond that provided for in the health benefit plan, coverage for a specific nonformulary drug or device determined to be medically necessary and appropriate by the enrollee's participating physician without prior approval from the insurer, after the enrollee's participating physician notifies the insurer that:~~

~~a. Either (i) the formulary alternatives have been ineffective in the treatment of the enrollee's disease or condition, or (ii) the formulary alternatives cause or are reasonably expected by the physician to cause a harmful or adverse clinical reaction in the enrollee; and~~

~~b. Either (i) the drug is prescribed in accordance with any applicable clinical protocol of the insurer for the prescribing of the drug, or (ii) the drug has been approved as an exception to the clinical protocol pursuant to the insurer's exception procedure.~~ Update protocols based on a review of new evidence, research, and newly developed treatments.

(4) ~~Provide coverage for a restricted access drug or device to an enrollee without requiring prior approval or use of a nonrestricted formulary drug if an enrollee's physician certifies in writing that the enrollee has previously used an alternative nonrestricted access drug or device and the alternative drug or device has been detrimental to the enrollee's health or has been ineffective in treating the same condition and, in the opinion of the prescribing physician, is likely to be detrimental to the enrollee's health or ineffective in treating the condition again.~~ An insurer, or a pharmacy benefits manager under contract with an insurer, shall require that its pharmacy and therapeutics committee either meet the requirements for conflict of interest set by the Center for Medicare and Medicaid Services or meet the accreditation standards of the National Committee for Quality Assurance or another independent accrediting organization.

(b) An insurer may not void a contract or refuse to renew a contract between the insurer and a prescribing provider because the prescribing provider has prescribed a medically necessary and appropriate nonformulary or restricted access drug or device as provided in this section.

(b1) Exception Process. – Each insurer shall establish and maintain an expeditious process or procedure, published on either the insurer's Web site or in policies provided to health care providers, that allows an enrollee or the enrollee's prescribing provider acting on behalf of the enrollee to obtain, without penalty or additional cost-sharing beyond that provided for in the health benefit plan, coverage for a specific nonformulary drug or device or the drug requested by the prescribing provider, if it is determined to be medically necessary and appropriate by the enrollee's prescribing provider and the prescription drug is covered under the current health benefit plan.

(1) An insurer shall grant an exception request if the prescribing provider's submitted justification and supporting clinical documentation are sufficient to demonstrate any of the following:

a. The enrollee has tried the alternate drug or drugs while covered by the current or the previous health benefit plan.

b. The formulary or alternate drug or drugs has been ineffective in the treatment of the enrollee's disease or condition.

c. The formulary or alternate drug or drugs causes or is reasonably expected by the prescribing provider to cause a harmful or adverse clinical reaction in the enrollee.

d. Either (i) the drug is prescribed in accordance with any applicable clinical protocol of the insurer for the prescribing of the drug or (ii) the drug has been approved as an exception to the clinical protocol pursuant to the insurer's exception procedure.

e. The enrollee's prescribing provider certifies in writing that the enrollee has previously used an alternative nonrestricted access drug or device and the alternative drug or device has been detrimental to the enrollee's health or has been ineffective in treating the same condition and, in the opinion of the prescribing health care provider, is likely to be detrimental to the enrollee's health or ineffective in treating the condition again.

(2) Nothing in this section shall preclude an insurer from requiring prior authorization for the coverage of a prescribed drug that was covered by the enrollee's previous health benefit plan.

(b2) Pharmaceutical drug samples or patient incentive programs, including coupons or debit cards, shall not be considered trial and failure of a preferred prescription drug in lieu of trying the formulary-preferred prescription drug.

(b3) Exception process requirements:

(1) The insurer, health benefit plan, or utilization review organization may request relevant documentation from the patient or health care provider to support the exception request. Relevant information includes the results of any patient examination, clinical evaluation, or second opinion that may be required.

(2) A licensed physician or licensed pharmacist shall evaluate the clinical appropriateness of the exception request.

(3) For nonurgent exception requests for a prospective or concurrent review:

a. The insurer shall communicate to the enrollee's health care provider if additional information is required within 72 hours after the insurer receives the exception request.

b. The insurer shall communicate an exception request determination to the enrollee's providers within 72 hours after receiving all relevant information.

(4) In the case of an urgent review:

a. The insurer shall communicate to the enrollee's health care provider if additional information is required within 24 hours after the insurer receives the exception request.

b. The insurer shall communicate an exception request determination to the enrollee's providers within 24 hours after receiving all relevant information.

(c) As used in this section:

(1) "Closed formulary" means a list of prescription drugs and devices reimbursed by the insurer that excludes coverage for drugs and devices not listed.

(1a) "Health benefit plan" has definition provided in G.S. 58-3-167.

(2) "Insurer" has the meaning provided in G.S. 58-3-167.

(3) "Restricted access drug or device" means those covered prescription drugs or devices for which reimbursement by the insurer is conditioned on the insurer's prior approval to prescribe the drug or device or on the provider prescribing one or more alternative drugs or devices before prescribing the drug or device in question.

(d) Nothing in this section requires an insurer to pay for drugs or devices or classes of drugs or devices related to a benefit that is specifically excluded from coverage by the insurer.

(e) This section shall not be construed to prevent the health benefit plan from requiring an enrollee to try an A-rated generic equivalent drug, or a biosimilar, as defined under 42 U.S.C. § 262(i)(2), prior to providing coverage for the equivalent branded prescription drug."

SECTION 4.(b) This section becomes effective October 1, 2020, and applies to insurance contracts issued, renewed, or amended on or after that date.

PART V. CLARIFY THE USE OF CORONAVIRUS RELIEF FUNDS

SECTION 5. Section 3.3(34) of S.L. 2020-4 reads as rewritten:

"(34) $5,000,000 to OSBM to allocate to the North Carolina Community Health ~~Centers~~ Center Association ~~(NCHCA),~~ (NCCHCA), a nonprofit organization, to be used for distribution to its member health centers to cover the cost of eligible health services provided during the COVID-19 ~~emergency.~~ emergency and to offset the following costs incurred by NCCHCA member health centers related to the provision of patient care within the State to respond to the COVID-19 pandemic:

a. Supplies and equipment purchased in accordance with Centers for Disease Control and Prevention Guidelines.

b. Rapidly ramping up infection control and triage training for health care professionals.

c. Retrofitting separate areas to screen and treat patients with suspected COVID-19 infections.

d. Transporting patients with confirmed or suspected COVID-19 infections safely to or from health care facilities.

e. Planning, training, and implementing expanded telehealth capabilities.

By August 1, 2020, ~~NCHCA~~ the NCCHCA shall report to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division on a plan for allocating the funds received under this section, and by February 1, 2021, on the use of these funds by recipients."

PART VI. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 6.(a) If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

SECTION 6.(b) Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of June, 2020.

s/ Philip E. Berger

President Pro Tempore of the Senate

s/ Tim Moore

Speaker of the House of Representatives

s/ Roy Cooper

Governor

Approved 5:36 p.m. this 1st day of July, 2020

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