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Emily B Caudill
REGULATIONS COMPILER

1 GENERAL GOVERNMENT CABINET

2 Kentucky Board of Licensed Professional Counselors

3 (Amendment)

4 201 KAR 36:100. Counseling compact.

5 RELATES TO: KRS 335.560

6 STATUTORY AUTHORITY: KRS 335.515, 335.560

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.560, Section 16.B.1. requires the

8 Board of Licensed Professional Counselors to review any rule adopted by the Counseling Compact

9 pursuant to Section 11 of KRS 335.560 within sixty (60) days of adoption for the purpose of filing

10 the rule as an emergency administrative regulation pursuant to KRS 13A.190 and for filing the

11 rule as an accompanying ordinary administrative regulation pursuant to KRS Chapter 13A. This

12 administrative regulation incorporates by reference the rules adopted by the Counseling Compact.

13 Section 1. The Board of Licensed Professional Counselors shall comply with all rules of the

14 Counseling Compact, which includes the Counseling Compact Rules as of January 10, 2024.

15 Section 2. Incorporation by Reference.

16 (1) The following material is incorporated by reference: "The Counseling Compact Rules",

17 January 10, 2024, and as revised.

18 (a) Chapter 2 – Definitions, adopted October 25, 2023;

19 (b) Chapter 3 – Examination Requirements, adopted October 25, 2023; ~~and~~

20 (c) Chapter 4 – Data System Reporting Requirements, adopted January 10, 2024; ~~and~~

1 (d) Chapter 5 – Rulemaking on Legacy Eligibility for Privilege to Practice, adopted October 8,
2 2024; and

3 (e) Chapter 6. Rulemaking on Implementing Criminal Background Checks, adopted October 8,
4 2024.

5 (2)

6 (a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the
7 Board of Licensed Professional Counselors, 500 Mero Street, 2 SC 32, Frankfort, Kentucky 40602,
8 Monday through Friday, 8 a.m. to 4:30 p.m.; or

9 (b) This material may also be obtained on the Board of Licensed Professional Counselors' Web
10 site at <https://lpc.ky.gov/>.

11 (3) This material may also be obtained at:

12 (a) The Counseling Compact Commission, 108 Wind Haven Drive, Suite A, Nicholasville,
13 Kentucky 40356; or

14 (b) <https://counselingcompact.org/compact-commission/rulemaking/>.

201 KAR 36.100

APPROVED BY AGENCY:

Andrea Brooks

Dr. Andrea Brooks
Chair, Board of Licensed Professional Counselors

Date: December 20, 2024

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on February 25, 2025, at 2:00 P.M. Eastern Time, at the Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky in PPC Conference Room 127CW. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 28, 2025. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to https://ppc.ky.gov/reg_comment.aspx or the contact person.

CONTACT PERSON:

Name: Sara Boswell Janes

Title: Staff Attorney III

Agency: Department of Professional Licensing, Office of Legal Services

Address: 500 Mero Street, 2 NC WK#2

Phone Number: (502) 782-2709 (office)

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Email: Sara.Janes@ky.gov

Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 201 KAR 36:100
Contact Person: Sara Boswell Janes
Phone Number: (502) 782-2709 (office)
Email: sara.janes@ky.gov

(1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation implements KRS 335.560, the Counseling Compact.
- (b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 335.560, SECTION 16.B.1. requires rules adopted by the Counseling Compact to be promulgated as administrative regulations pursuant to KRS Chapter 13A.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the specific requirements of the authorizing statute, KRS 335.560, SECTION 16.B.1. which requires rules adopted by the Counseling Compact to be promulgated as administrative regulations pursuant to KRS Chapter 13A.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation conforms to the content of KRS 335.560 which requires this promulgation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation: The amendment will add two (2) new compact rules adopted on October 8, 2024.
- (b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary because KRS 335.560, SECTION 16.B.1. requires rules adopted by the Counseling Compact to be promulgated as administrative regulations pursuant to KRS Chapter 13A. Two (2) new rules were adopted on October 8, 2024.
- (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with the authorizing statutes by being filed within sixty (60) days of the adoption of the new rules by the Counseling Compact Commission.
- (d) How the amendment will assist in the effective administration of the statutes: The amendment will ensure the Board and all affected licensees have access and full disclosure of the rules relating to the compact and the privilege to practice in Kentucky and other compact states.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 4504 active and 59 inactive licensees in some capacity, and will also affect new applicants for licensure.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is necessary.
- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost imposed by this administrative regulation.
- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.
- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
- (a) Initially: There is no additional cost.
- (b) On a continuing basis: There is no additional cost.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicant.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required.
- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.
- (9) TIERING: Is tiering applied? (Explain why or why not): Tiering was not applied as the changes apply to all equally.

FISCAL IMPACT STATEMENT

Regulation No. KAR 36:100
Contact Person: Sara Boswell Janes
Phone Number: (502) 782-2709 (office)
Email: sara.janes@ky.gov

(1) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515, 335.560. Interstate compacts are specifically authorized under the federal constitution (Article 1, Section 10, Clause 3- the Compacts Clause) and take precedence over any conflicting state law pursuant to the Compacts Clause and the Contracts Clause, U.S. Constitution, Article 1, Section 10, Clause 1.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: the Kentucky Board of Licensed Professional Counselors is the promulgating agency and the only affected state unit, part or division.

(a) Estimate the following for the first year:

Expenditures: The compact will likely become operational in 2025, however, the expenditures needed in the first year are currently indeterminable. There will likely be some state expenditures necessary for data system programming, administering applications for compact privileges within and without the Commonwealth, as well as administering complaint and enforcement actions for those with the privilege to practice in Kentucky, and possibly for Kentucky licensees with the privilege to practice in other states.

Revenues: If the compact becomes operational in Kentucky during the first year, The Board may require imposition of a fee to cover the cost of administration. However, at this time potential revenues are indeterminable.

Cost Savings: Indeterminable.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The compact will likely become operational in 2025, however, the expenditures, revenue and cost savings in subsequent years, if any, are currently indeterminable.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None anticipated.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference in expenditures, revenues or cost savings to local entities in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is minimal anticipated fiscal impact to this administrative regulation in the first year. It is possible there will be a fiscal impact of administering applications for compact privileges for in-state licensees who apply for the privilege to practice in another state, and for out of state licensees who apply for the privilege to practice in Kentucky. The Compact Commission remains in its infancy and the work to be conducted by the state board on behalf of the compact is yet to be determined.

(b) Methodology and resources used to determine the fiscal impact: Methodology and resources are currently indeterminable since there are no known duties outlined for the state in relation to the compact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate). This administrative regulation will not have an overall negative or adverse major economic impact to the entities identified.

(b) The methodology and resources used to reach this conclusion: Methodology and resources are currently indeterminable since there are no known duties outlined for the state in relation to the compact; however, given the number of licensees, current budget and anticipated number of applications for out of state licensees to obtain the privilege to practice in Kentucky, no major economic impact is anticipated.

SUMMARY OF MATERIALS INCORPORATED BY REFERENCE

201 KAR 36:100

"The Counseling Compact Rules", adopted by the Counseling Compact Commission at its Annual Business Meeting on October 25, 2023, relate to the Rule on Definitions and the Rule on Examination Requirements; and, by the Full Counseling Compact Commission on January 10, 2024, relating to the Rule on Data System Reporting Requirements.

SUMMARY OF CHANGES MATERIALS INCORPORATED BY REFERENCE

201 KAR 36:100

The following changes are being made to the Counseling Compact Commission Rules:

- (d) Chapter 5 – Rulemaking on Legacy Eligibility for Privilege to Practice, adopted October 8, 2024; and
- (e) Chapter 6. Rulemaking on Implementing Criminal Background Checks, adopted October 8, 2024.



Rule on Legacy Eligibility for Privilege to Practice

Title of Rule: Rule on Legacy Eligibility for Privilege to Practice

Vote on Rule: October 8, 2024

Public Comment: Interested persons may electronically submit written comments on the proposed rule to gsearls@clear-ams.org with the subject line "Counseling Compact Commission Rule Comment" or by attending the meeting at which the rule will be discussed and voted on. Written comments on the proposed rule must be submitted by **August 11, 2024, 11:59 p.m. MT**.

Effective: November 7, 2024 (30 days after Full Commission approval)

History: March 28, 2024 Rule introduced at Rules Committee Meeting.
April 25, 2024 Rule adopted by the Rules Committee for proposal to Executive Committee
June 5, 2024 Rule adopted by the Executive Committee
June 18, 2024 Rule posted to the website for public comment
October 8, 2024 Rule adopted by Full Commission

Chapter 5: Rulemaking on Legacy Eligibility for Privilege to Practice

Authority: Section 3: State Participation in the Compact

Section 4: Privilege to Practice

Section 9: Establishment of the Counseling Compact Commission

Section 11: Rulemaking

5.0 Purpose: Pursuant to Section 3.A.2, 3.A.3, 3.A.4, 4.A, and Section 9, a State must currently:

- Require Licensees to pass a nationally recognized exam approved by the Commission
- Require Licensees to have a 60 semester-hour (or 90 quarter-hours) master's degree in counseling or 60 semester-hours (or 90 quarter-hours) of graduate course work in defined areas of study and require Licensees to pass a nationally recognized exam approved by the Commission.
- Require Licensees to complete a supervised postgraduate professional experience as defined by the Commission

The Counseling Compact Commission shall promulgate reasonable and lawful uniform rules to facilitate and coordinate the implementation and administration of the Counseling Compact. This rule will become effective upon passage by the Counseling Compact Commission as provided in Section 9 of the Counseling Compact.

This rule will become effective upon passage by the Counseling Compact Commission as provided in Section 11 of the Counseling Compact.



5.1 Legacy Eligibility:

- A. Licensed Professional Counselors licensed for independent clinical practice prior to the effective date of their Home State becoming a Member State of the compact will be deemed compact eligible if they also meet all of the other requirements of Sections 3.B.3 and 4.A of the Compact.



Rule on Implementation of Criminal Background Check

Title of Rule: Rule on Implementation of Criminal Background Check

Effective: November 7, 2024 (30 days after Full Commission approval)

Public Comment: Comment was received from June 18, 2024, through August 11, 2024.

Voted on: October 8, 2024

History: January 24, 2024 Rule introduced at Rules Committee Meeting.
February 22, 2024 Rule adopted by the Rules Committee
April 3, 2024 Rule Adopted by Executive Committee
June 18, 2024 Rule posted to the website for public comment
October 8, 2024 Rule Adopted by Full Commission

Chapter 6: Rulemaking on Implementing Criminal Background Checks

Authority: Section 3: State Participation in the Compact
Section 9: Establishment of the Counseling Compact Commission
Section 11: Rulemaking

6.0 Purpose: Pursuant to Section 3.B.3, and Section 9, a state must implement or utilize procedures for considering the criminal history records of applicants for initial privilege to practice. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records. A member state must fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the Federal Bureau of Investigation record search on criminal background checks and using the results in making licensure decisions.

The Counseling Compact Commission shall promulgate reasonable and lawful uniform rules to facilitate and coordinate the implementation and administration of the Counseling Compact. This rule will become effective upon passage by the Counseling Compact Commission as provided in Section 9 of the Counseling Compact.



6.1 Implementation of Criminal Background Check:

To avoid default, member states must have completed all required processes, requirements, and applications necessary to request the ability to receive the results of the Federal Bureau of Investigation (FBI) record search on criminal background checks, as required by the Compact. Deference will be given to member states who can demonstrate that they have engaged in good faith efforts to implement the FBI Criminal Background Check including, but not limited to, the introduction of related legislation, negotiations with FBI state information bureaus, etc.

Results of the criminal background check shall be reviewed solely by the member state in accordance with state law.

Communication between a member board and the Interstate Commission and communications between member boards regarding verification of a Professional Counselor's eligibility for a privilege through the Compact shall not include any information received from the FBI relating to a federal criminal records check performed by a member board under Public Law 92-544.

A member state cannot participate in issuing or accepting compact privileges until such member state has completed the requirements to fully implement the FBI Criminal Background Check requirement established in Section 3.B.1 of the Compact. As used in Section 3.B.1 of the Compact, full implementation of the FBI Criminal Background Check requirement means that the member state's licensing board is using the results of the FBI record search on criminal background checks in making licensure decisions for all applicants seeking an initial privilege to practice as a Professional Counselor in the member state whom will also seek a privilege to practice under the Counseling Compact.