

Audiology & Speech- Language Pathology Interstate Compact (ASLP-IC)

An overview of interstate compacts and in-depth information on the ASLP-IC's process development, requirements to participate, and benefits to states and consumers.

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Interstate Compact Overview

An interstate compact is a powerful, durable, and adaptive tool for ensuring cooperative action among states. It can provide a state-developed structure for collaborative and dynamic action while building consensus among states. The nature of an interstate compact makes it the ideal tool to meet the demand for cooperative state action by developing and enforcing stringent standards while providing an adaptive structure that, under a modern compact framework, can evolve to meet new and increased demands over time.

General purposes for creating an interstate compact include:

- establishing a formal, legal relationship among states to address common problems or promote a common agenda;
- creating independent, multistate governmental authorities (e.g., Commissions) that can address issues more effectively than a state agency acting independently, or when no state has the authority to act unilaterally;
- developing uniform guidelines, standards, or procedures for agencies in the compact's member states;
- promoting economies of scale to reduce administrative and other costs;
- responding to national priorities in consultation or in partnership with the federal government;
- retaining state sovereignty in matters traditionally reserved for the states; and
- settling interstate disputes.

Congressional Approval

Congress typically must first approve an interstate compact. Article I, Section 10 of the U.S. Constitution provides in part that “no state shall, without the consent of Congress, enter into any agreement or compact with another state.” Historically, this clause generally meant all compacts must receive congressional consent. However, the purpose of this provision was not to inhibit the states’ ability to act in concert with each other. In fact, by the time the Constitution was drafted, the states were already accustomed to resolving disputes and addressing problems through interstate compacts and agreements. The purpose of the compact clause was simply to protect the pre-eminence of the new national government by preventing the states from infringing upon federal authority or altering the federal balance of power by compact.

Accordingly, the Supreme Court indicated more than 100 years ago in *Virginia v. Tennessee*, 148 U.S. 503 (1893) that not all compacts require Congressional approval. Today, it is well established that only those compacts that affect a power delegated to the federal government or alter the political balance within the federal system, require the consent of Congress.

State Constitutions Permit the Creation and/or Joining of Interstate Compacts

Compact language is usually drafted with state constitutional requirements common to most state constitutions such as separation of powers, delegation of power, and debt limitations in mind. The validity of the state authority to enter compacts and potentially delegate authority to an interstate agency has been specifically recognized and unanimously upheld by the U.S. Supreme Court in *West Virginia v. Sims*, 341 U.S.22 (1951).

Interstate Compacts Are Common

Over 200 interstate compacts are in existence today. Typically, a state belongs to more than 20 interstate compacts.

Types of Interstate Compacts

Although there are many types of interstate compacts that are generally divided into three types of compacts:

- **Regulatory Compacts:** The broadest and largest category of interstate compacts may be referred to as “regulatory” or “administrative” compacts. Such compacts are a development of the 20th century and embrace wide-ranging topics including regional planning and development, crime control, agriculture, flood control, water resource management, education, mental health, juvenile delinquency, child support, and so forth. Examples of such compacts include:
 - *Driver License Compact:* Exchange information concerning license suspensions and traffic violations of non-residents and forward them to the state where they are licensed known as the home state.
 - *Interstate Compact on Adult Offender Supervision:* Regulate the movement of adult offenders across state lines.
 - *Midwest Radioactive Waste Disposal Compact:* Regulate radioactive waste disposal.
 - *Washington Metropolitan Area Transit Regulation Compact:* Regulate passenger transportation by private carrier.
 - *1921 Port Authority of New York-New Jersey Compact:* Provides joint agency regulation of transportation, terminal, and commerce/trade facilities in the New York metropolitan area.

Regulatory compacts create ongoing administrative agencies whose rules and regulations may be binding on the states to the extent authorized by the compact.

- **Border Compacts:** Border compacts are agreements between two or more states that alter the boundaries of a state. Once adopted by the states and approved by Congress, such compacts permanently alter the boundaries of the state and can only be undone by a subsequent compact approved by Congress or the repeal of the compact with Congress’s approval. Examples include the Virginia-Tennessee Boundary Agreement of 1803, Arizona-California Boundary Compact of 1963, the Missouri-Nebraska Compact of 1990, and the Virginia-West Virginia Boundary Compact of 1998.
- **Advisory Compacts:** Advisory compacts are agreements between two or more states that create study commissions. The purpose of the commission is to examine a problem and report back to the respective states on their findings. Such compacts do not result in any change in the state’s boundaries nor do they create ongoing administrative agencies with regulatory authority. They do not require congressional consent because they do not alter the political balance of power between the states and federal government or intrude on a congressional power. An example of such a compact is the Delmarva Peninsula Advisory Council Compact (to study regional economic development issues), 29 Del. C. § 11101 (2003); Va. Code Ann. § 2.2- 5800 (2003).

Regulatory Interstate Compacts in Health Care are Unique

Depending on the needs of the profession, interstate compacts addressing regulatory matters within the health care sector can be structured quite differently. Currently, there are several professions utilizing interstate compacts to address regulatory matters and each profession has taken a different approach when writing its compact language. For example, in comparing the professions of medicine and nursing, medicine chose to construct its compact to address expedited licensure; while nursing's compact creates a multistate license. Audiology and speech-language pathology has chosen to use the *privilege to practice* model that is currently being used by the physical therapists.

Interstate Compacts Provide Many Advantages

Interstate compacts provide an effective solution to addressing multistate issues. Compacts enable the states, in their sovereign capacity, to act jointly and collectively, generally outside the confines of the federal legislative or regulatory process while respecting the view of Congress on the appropriateness of joint action. Interstate compacts can preempt federal involvement into matters that are traditionally within the purview of the states but have regional or national implications.

Compacts afford states the opportunity to develop dynamic self-regulatory systems that participating states can maintain control of through a coordinated legislative and administrative process. Compacts enable the states to develop adaptive structures that can evolve to meet new and increased challenges that naturally arise over time.

Interstate compacts can provide states with a predictable, stable, and enforceable instrument of policy control. The contractual nature of compacts ensures their enforceability on the participating states. The fact that compacts cannot be unilaterally amended ensures that participating states will have a predictable and stable policy platform for resolving issues. By entering into an interstate compact, each participating state acquires the legal right to require the other states to perform under the terms and conditions of the compact.

Interstate compacts may often require a great deal of time to develop and implement. While recent interstate compact efforts have met with success in a matter of a few years, some interstate compacts have required decades to reach critical mass. The purpose of an interstate compact is to provide for the collective allocation of governing authority between participating states. The requirement of substantive "sameness" prevents participating states from passing dissimilar enactments notwithstanding, perhaps, pressing state differences with respect to matters within the compact.

To the extent that a compact is used as a governing tool, they require, even in the boundary compact context, that participating states cede some portion of their sovereignty. The matter of state sovereignty can be particularly problematic when interstate compacts create ongoing administrative bodies that possess substantial governing power. Such compacts are truly a creation of the 20th century as an out-growth of creating the modern administrative state. However, as the balance of power continues to realign in our federalist system, states may only be able to preserve their sovereign authority over interstate problems to the extent that they share their sovereignty and work together cooperatively through interstate compacts.

Interstate Compact Development

Compacts are contracts between states. To be enforceable, they must satisfy the customary requirements for valid contracts, including the notions of offer and acceptance. An offer is made when one state, usually by statute, adopts the terms of a compact requiring approval by one or more additional states to become effective. Other states accept the offer by adopting identical compact language. Once the required number of states has adopted the pact, the contract between them is valid and becomes effective as provided. The only other potential requirement is congressional consent.

Interstate Compact Components

The compact should contain the minimum basics upon which it needs to operate, including the agreement between states and the operation of its governing body. The compact does not need to address every conceivable eventuality, nor should it. Its purpose is to provide the framework to build upon. The rules are the actuators of the compact and contain the details of state interaction, including:

- how information will be shared;
- standards and practices to be followed;
- forms that will be used; and
- timelines to be established.

By using the compact as the broad framework, the rules can be adapted and adjusted as needed throughout the life the compact without the need to go back each time for legislative approval from the member states, subject to the legislatively delegated authority.

Audiology & Speech-Language Pathology Interstate Compact (ASLP-IC)

Development Process

ASLP-IC is an interstate compact designed to allow licensed audiologists and speech-language pathologists to practice across state boundaries and through telepractice both legally and ethically without necessitating that an individual become licensed in every state to practice.

The development of any interstate compact should be a state-driven and state-championed solution for issues that cross state boundaries. The American Speech-Language-Hearing Association (ASHA), the national professional association for audiologists and speech-language pathologists, was approached by its members to develop a mechanism to assist in the regulation of interstate licensure and telepractice. Given ASHA's financial and operational abilities, ASHA agreed to underwrite the process and engage in a contract with the Council of State Governments, National Center for Interstate Compacts (CSG-NCIC). ASHA partnered with CSG-NCIC and the National Council of State Boards of Examiners in Speech-Language Pathology and Audiology (NCSB) to move forward with the ASLP-IC.

The initial process involved identifying an Advisory Group and Drafting Team.

- **Advisory Group:** The Advisory Group was composed of 16 members including state officials and representatives from state licensing boards, the U.S. Department of Defense, and national stakeholder organizations. They examined the challenges encountered by audiologists and speech-language pathologists providing interstate services, both in-person and through telepractice. The group then reviewed the feasibility of drafting a compact as a way of regulating interstate practice as well as meeting the request of the member boards to create an agreement between the states. The Advisory Group met in 2017. Their work culminated in a set of broad recommendations as to what the final compact product should entail.
- **Drafting Team:** The Drafting Team, a subset of the Advisory Group, was tasked with implementing, via a draft compact, the thoughts, ideas, and suggestions of the Advisory Group. The six-member Drafting Team, composed of compact and issue area experts, crafted the recommendations and provided their thoughts and expertise into the draft compact. The document was then open for comment in October 2018 for stakeholders. After the stakeholder feedback period, the Drafting Team made modifications as needed based on the feedback.

ASLP-IC becomes operational once 10 states enact ASLP-IC and enter the compact. The Advisory Group determined 10 states would be the critical mass needed to make ASLP-IC a useful and viable instrument to practice under the authority of ASLP-IC across state lines. Coincidentally, other compacts like the Physical Therapy Compact have used 10 states as a benchmark for their compact to become operational.

When an ASLP-IC becomes operational the ASLP-IC Commission is created. The Commission is the governing body of ASLP-IC and is responsible for its oversight and the creation of its Rules and Bylaws. Individual licensed audiologists and speech-language pathologists in ASLP-IC member state can then apply for a *privilege to practice*.

The role of the ASLP-IC Commission is the governing body of the ASLP-IC and is comprised of two representatives appointed from each ASLP-IC state licensing board; one representing the practice of audiology and one representing the practice of speech-language pathology. The Commission is responsible for implementing the Rules and Bylaws of the ASLP-IC.

The ASLP-IC Commission operates as the free-standing governing body of the ASLP-IC. NCSB will have one ex-officio, nonvoting member serve on the Executive Board of the Commission. A national audiology membership organization and a national speech-language pathology membership organization will also have one ex-officio, nonvoting membership each on the Executive Board of the Commission.

Requirements for Audiologists and Speech-Language Pathologists to Participate

The prevailing standard in the United States for the profession of audiology is for an individual to possess a doctoral degree in audiology. The prevailing standard in the United States for the profession of speech-language pathology is for an individual to possess a master's degree in speech-language pathology.

A licensed audiologist's or speech-language pathologist's participation in the ASLP-IC requires that he or she meet a defined set of criteria as stated in the ASLP-IC. Through a state's participation in the ASLP-IC, an audiology or speech-language pathology licensing board does not conduct the full assessment and review as required when reviewing an individual's application for licensure. Rather, they rely on the ASLP-IC to vet an individual's qualifications and ensure that they meet this defined set of standards, such as not having any disciplinary issues, as those individuals participating in the ASLP-IC will not be reviewed by a board on a case-by-case basis.

An audiologist who has graduated with a master's degree in audiology prior to December 31, 2007, may obtain a *privilege to practice* under the ASLP-IC.

If an ASLP-IC participating state does not require a separate license or certification to work in a school, an individual who works in a school may obtain a *privilege to practice* under the ASLP-IC. That individual may work in a school in another participating state only if that state does not require a separate license or certification to do so.

| Home State | Remote State | Privilege to Practice |
|---------------------------|---------------------------|---------------------------|
| One license | One license | Privilege to Practice |
| One license | DOE License/Cert required | DOE License/Cert required |
| DOE License/Cert required | DOE License/Cert required | DOE License/Cert required |
| DOE License/Cert required | One license | Privilege to Practice |

If an ASLP-IC participating state does not require a separate license to dispense a hearing aid, a practitioner may obtain a *privilege to practice* under the ASLP-IC and will be able to continue to do so. If the remote state does require a separate license to dispense, the practitioner will have to obtain that license.

| Home State | Remote State | Privilege to Practice |
|----------------------|----------------------|-----------------------|
| One license | One license | Privilege to Practice |
| One license | HAD license required | HAD license required |
| HAD license required | HAD license required | HAD license required |
| HAD license required | One license | Privilege to Practice |

An individual can no longer practice under the authority of the ASLP-IC if his or her state license is revoked. An individual is still eligible to apply for licensure directly in any state, regardless of that state’s participation in the ASLP-IC. By applying for licensure, the board will make the final, ultimate determination to decide if a license to practice audiology or speech-language pathology should be granted.

Section 3 – “G. The privilege to practice is derived from the home state license.”

Section 4 – “J. If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:

1. *The home state license is no longer encumbered; and*
2. *Two years have elapsed from the date of the adverse action.”*

If a *privilege to practice* is revoked because of an adverse action, every other state where a *privilege to practice* is held and where the home state license is held will determine if the privilege or license in that state is also revoked.

An audiologist’s or speech-language pathologist’s *privilege to practice* is not revoked while an audiologist or speech-language pathologist is in an alternative program.

Section 7: “I. Nothing in this compact shall override a member state’s decision that participation in an alternative program may be used in lieu of adverse action.”

Continuing Education & the ASLP-IC. A practitioner only needs to maintain their home state license and associated continuing education in order to obtain a *privilege to practice* in a remote state. The practitioner does not need to meet a remote state’s continuing education requirements unless it relates to scope of practice issues. For example, if a remote state requires continuing education in supervision in order to supervise, the practitioner would be required to complete that continuing education requirement if they planned to supervise.

ASLP-IC provides an accessible and manageable regulatory structure for the practice of audiology and speech-language pathology across state lines. Advantages to consumers are increased access to care, an avenue for complaints, and a greater degree of public protection. Audiologists and speech-language pathologists also have a means to provide services in other states where they may not currently hold a license. ASLP-IC requires that an

audiologist and speech-language pathologist be licensed in their home state but allows to practice in a remote state through a *privilege to practice*. This allows the home state to continue to regulate while allowing the remote state to know who is practicing in their state and in what capacity without requiring audiologists and speech-language pathologists to obtain and maintain a license in every ASLP-IC state.

Impact on States

Licensing requirements vary state to state.

As a means to promote compliance with laws as well as develop consistency in practice standards amongst states, ASLP-IC serves as mechanism in which states agree to accept audiologists and speech-language pathologists that have met a defined level of standards who are practicing in their state.

The rules of the ASLP-IC are only applicable to states that enact ASLP-IC.

The rules of the ASLP-IC would only supersede any state law pertaining to the interjurisdictional practice of audiology and speech-language pathology.

A state can withdraw from ASLP-IC by repealing the ASLP-IC Model Legislation.

The withdrawal shall not take effect until six (6) months after enactment of the repealing Statute. Withdrawal will not affect the continuing requirement of the withdrawing State's Audiology and Speech-Language Pathology Regulatory Authority to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

Section 12 – “C. Any member state may withdraw from this Compact by enacting a statute repealing the same.”

ASLP-IC does not impact a state's right or ability to issue a license.

It is applicable only to the interjurisdictional practice of audiology and speech-language pathology precedence over state laws regarding this type of interjurisdictional practice.

Impact on Audiologists and Speech-Language Pathologists

Once the ASLP-IC becomes operational, audiologists and speech-language pathologists can apply for the *privilege to practice* in ASLP-IC states.

By already being licensed in the home state and remote state, an individual has already established full rights to practice in these states and, therefore, an individual would not receive a *privilege to practice* through the ASLP-IC.

An audiologist or speech-language pathologist would need to cancel the license in the remote state and apply for a *privilege to practice* through the ASLP-IC.

Impact on Consumers

ASLP-IC is a mechanism that can ensure public protection and improve access to care

while easing the barriers for competent and qualified audiologists and speech-language pathologists through the following:

- All audiologists and speech-language pathologists must hold an active license in their home state.
- Although audiologists and speech-language pathologists are not required to have a license in the remote state, they must meet established criteria and have had no disciplinary sanctions in order to receive a *privilege to practice*.
- States will have access to a real-time, searchable database that provides information about where audiologists and speech-language pathologists are intending to practice within their state.
- ASLP-IC provides a structure for the remote state to revoke the audiologist's or speech-language pathologist's ability to practice within their state.
- Currently, states may not have the authority to impose discipline on their licensees for practice outside state boundaries. ASLP-IC allows the home state to impose discipline regarding the practice in other states.

Through ASLP-IC, states can be assured that the consumers will be receiving care from qualified audiologists and speech-language pathologists and have improved access to care. States will now have a means to identify audiologists and speech-language pathologists providing services in their state as well as have a procedure to address disciplinary sanctions.

Through the ASLP-IC, consumers will have greater access to care.

ASLP-IC will allow licensed audiologists and speech-language pathologists to provide continuity of care as clients, patients, and/or students relocate. Audiologists and speech-language pathologists will also be able to reach populations that are currently underserved, geographically isolated, or lack specialty care.

Additionally, states will have an external mechanism that accounts for all audiologists and speech-language pathologists who may enter their state to practice; thus, indicating audiologists and speech-language pathologists have met defined standards and competencies to practice in other states. ASLP-IC will also help states ensure the public will be better protected from harm.

