DRAFT ONLY
NOT APPROVED FOR INTRODUCTION

HOUSE BILL NO.

Physician assistant licensure compact.

Sponsored by: Joint Labor, Health & Social Services Interim Committee

A BILL

for

AN ACT relating to professions and occupations; entering into a compact with other states to allow physician assistants licensed in one (1) compact state to practice medicine in other compact states; approving and specifying terms of the compact; making conforming amendments; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 33-26-801 and 33-26-802 are created to read:

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STAFF COMMENT

There is a staff comment at the end of this bill draft that pertains to some of the provisions of the compact. There are also several staff comments placed throughout the bill draft for the Committee's review.

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ARTICLE 8

PHYSICIAN ASSISTANT LICENSURE COMPACT

33-26-801. Short title.

This act shall be known and may be cited as the "Physician Assistant Licensure Compact."

33-26-802. Compact provisions generally.

SECTION 1

PURPOSE

In order to strengthen access to medical services, and in recognition of the advances in the delivery of medical services, the participating states of the physician

assistant licensure compact have allied in common purpose to develop a comprehensive process that complements the existing authority of state licensing boards to license and discipline PAs and seeks to enhance the portability of a license to practice as a PA while safeguarding the safety of patients. This compact allows medical services to be provided by PAs via the mutual recognition of the licensee's qualifying license by other compact participating states. This compact also adopts the prevailing standard for PA licensure and affirms that the practice and delivery of medical services by a PA occurs where the patient is located at the time of the patient encounter, and therefore requires the PA to be under the jurisdiction of the state licensing board where the patient is located. State licensing boards that participate in this compact retain the jurisdiction to impose adverse action against a compact privilege in that state issued to a PA through the procedures of this compact. The PA licensure compact will alleviate burdens for military families by allowing active duty military personnel and their spouses to obtain a compact privilege based on having an unrestricted license in good standing from a participating state.

SECTION 2

DEFINITIONS

In this compact:

A. "Adverse action" means any administrative, civil, equitable or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against a PA license or license application or compact privilege such as license denial, censure, revocation, suspension, probation, monitoring of the licensee or restriction on the licensee's practice;

B. "Compact privilege" means the authorization granted by a remote state to allow a licensee from another participating state to practice as a PA to provide medical services and other licensed activity to a patient located in the remote state under the remote state's laws and regulations;

C. "Conviction" means a finding by a court that a person is guilty of a felony or misdemeanor offense through

adjudication or entry of a plea of guilt or no contest to the charge by the offender;

D. "Criminal background check" means the submission of fingerprints or other biometric-based information for a license applicant for the purpose of obtaining that applicant's criminal history record information, as defined in 28 C.F.R. § 20.3(d), from the state's criminal history record repository as defined in 28 C.F.R. § 20.3(f);

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STAFF COMMENT

It may be problematic that the compact cites to the C.F.R.s (see above) because they are amended often and the citations might not remain accurate in the future.

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E. "Data system" means the repository of information about licensees, including but not limited to, license status and adverse actions, which is created and administered under the terms of this compact;

F. "Executive committee" means a group of directors and ex-officio persons elected or appointed pursuant to section 7.F.2. of this compact;

G. "Impaired practitioner" means a PA whose practice is adversely affected by health-related conditions that impact their ability to practice;

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STAFF COMMENT

The term "impaired practitioner" does not appear elsewhere in the compact. LSO's typical practice would be to omit the definition. It is retained because its omission might be seen as a substantive change to the compact.

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H. "Investigative information" means information, records or documents received or generated by a licensing board pursuant to an investigation;

I. "Jurisprudence requirement" means the assessment of a person's knowledge of the laws and rules governing the practice of a PA in a state;

J. "License" means current authorization by a state, other than authorization pursuant to a compact privilege, for a PA to provide medical services, which would be unlawful without current authorization;

K. "Licensee" means a person who holds a license from a state to provide medical services as a PA;

L. "Licensing board" means any state entity authorized to license and otherwise regulate PAs;

M. "Medical services" means health care services provided for the diagnosis, prevention, treatment, cure or relief of a health condition, injury or disease, as defined by a state's laws and regulations;

N. "Model compact" means the model for the PA licensure compact on file with the council of state governments or other entity as designated by the commission;

O. "Participating state" means a state that has enacted this compact;

P. "PA" means a person who is licensed as a physician assistant in a state. For purposes of this compact, any other title or status adopted by a state to replace the term "physician assistant" shall be deemed synonymous with "physician assistant" and shall confer the same rights and responsibilities to the licensee under the provisions of this compact at the time of its enactment;

Q. "PA licensure compact commission," "compact commission" or "commission" mean the national administrative body created pursuant to section 7.A. of this compact;

R. "Qualifying license" means an unrestricted license issued by a participating state to provide medical services as a PA;

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STAFF COMMENT

For the Committee's information, the definition of "qualifying license" above may or may not include a license under investigation.

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S. "Remote state" means a participating state where a licensee who is not licensed as a PA is exercising or seeking to exercise the compact privilege;

T. "Rule" means a regulation promulgated by an entity that has the force and effect of law;

U. "Significant investigative information" means investigative information that a licensing board, after an inquiry or investigation that includes notification and an opportunity for the PA to respond if required by state law, has reason to believe is not groundless and, if proven true, would indicate more than a minor infraction;

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STAFF COMMENT

The definition above seems incomplete. It likely can't be amended because that may be seen as a substantive change, but the last line should probably read "if proven true, would indicate more than a minor infraction *of licensing requirements*".

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V. "State" means any state, commonwealth, district or territory of the United States.

SECTION 3

STATE PARTICIPATION IN THIS COMPACT

A. To participate in this compact, a participating state shall:

1. License PAs;

2. Participate in the compact commission's data system;

3. Have a mechanism in place for receiving and investigating complaints against licensees and license applicants;

4. Notify the commission, in compliance with the terms of this compact and commission rules, of any adverse action against a licensee or license applicant and the existence of significant investigative information regarding a licensee or license applicant;

5. Fully implement a criminal background check requirement, within a time frame established by commission rule, by its licensing board receiving the results of a criminal background check and reporting to the commission whether the license applicant has been granted a license;

6. Comply with the rules of the compact commission;

7. Utilize passage of a recognized national exam such as the NCCPA PANCE as a requirement for PA licensure;

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STAFF COMMENT

The term "NCCPA PANCE" above should probably be spelled out or defined, but given that this might be considered a substantial change to the compact, LSO has not made this change.

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8. Grant the compact privilege to a holder of a qualifying license in a participating state.

B. Nothing in this compact prohibits a participating state from charging a fee for granting the compact privilege.

SECTION 4

COMPACT PRIVILEGE

A. To exercise the compact privilege, a licensee shall:

1. Have graduated from a PA program accredited by the accreditation review commission on education for the physician assistant, Inc. or other programs authorized by commission rule;

2. Hold current NCCPA certification;

3. Have no felony or misdemeanor convictions;

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STAFF COMMENT

For the Committee's information, the Wyoming Board of Medicine does not necessarily prohibit a person from being licensed as a PA within the state if they have a

misdemeanor conviction. This compact would prohibit a person from practicing in the compact states if they have a misdemeanor conviction.

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4. Have never had a controlled substance license, permit or registration suspended or revoked by a state or by the United States drug enforcement administration;

5. Have a unique identifier as determined by commission rule;

6. Hold a qualifying license;

7. Have had no revocation of a license or limitation or restriction on any license currently held due to an adverse action;

8. If a licensee has had a limitation or restriction on a license or compact privilege due to an adverse action, two (2) years shall have elapsed from the date on which the license or compact privilege is no longer limited or restricted due to the adverse action;

9. If a compact privilege has been revoked or is limited or restricted in a participating state for conduct that would not be a basis for disciplinary action in a participating state in which the licensee is practicing or applying to practice under a compact privilege, that participating state shall have the discretion not to consider such action as an adverse action requiring the denial or removal of a compact privilege in that state;

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STAFF COMMENT

The introduction language doesn't match with paragraphs 8. and 9. above.

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10. Notify the compact commission that the licensee is seeking the compact privilege in a remote state;

11. Meet any jurisprudence requirement of a remote state in which the licensee is seeking to practice under the compact privilege and pay any fees applicable to satisfying the jurisprudence requirement;

12. Report to the commission any adverse action taken by a non-participating state within thirty (30) days after the action is taken.

B. The compact privilege is valid until the expiration or revocation of the qualifying license unless terminated pursuant to an adverse action. The licensee shall also comply with all of the requirements of subsection A. of this section to maintain the compact privilege in a remote state. If the participating state takes adverse action against a qualifying license, the licensee shall lose the compact privilege in any remote state in which the licensee has a compact privilege until all of the following occur:

1. The license is no longer limited or restricted; and

2. Two (2) years have elapsed from the date on which the license is no longer limited or restricted due to the adverse action.

C. Once a restricted or limited license satisfies the requirements of paragraphs B.1. and 2. of this section, the licensee shall meet the requirements of subsection A. of this section to obtain a compact privilege in any remote state.

D. For each remote state in which a PA seeks authority to prescribe controlled substances, the PA shall satisfy all requirements imposed by such state in granting or renewing such authority.

SECTION 5

DESIGNATION OF THE STATE FROM WHICH LICENSEE IS APPLYING FOR A COMPACT PRIVILEGE

A. Upon a licensee's application for a compact privilege, the licensee shall identify to the commission the participating state from which the licensee is applying, in accordance with applicable rules adopted by the commission, and subject to the following requirements:

1. When applying for a compact privilege, the licensee shall provide the commission with the address of

the licensee's primary residence and thereafter shall immediately report to the commission any change in the address of the licensees primary residence;

2. When applying for a compact privilege, the licensee is required to consent to accept service of process by mail at the licensee's primary residence on file with the commission with respect to any action brought against the licensee by the commission or a participating state, including a subpoena, with respect to any action brought or investigation conducted by the commission or a participating state.

SECTION 6

ADVERSE ACTIONS

A. A participating state in which a licensee is licensed shall have exclusive power to impose adverse action against the qualifying license issued by that participating state.

B. In addition to the other powers conferred by state law, a remote state shall have the authority, in accordance

with existing state due process law, to do all of the following:

1. Take adverse action against a PA's compact privilege within that state to remove a licensee's compact privilege or take other action necessary under applicable law to protect the health and safety of its citizens;

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a participating state for the attendance and testimony of witnesses or the production of evidence from another participating state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state in which the witnesses or evidence are located;

3. Notwithstanding paragraph 2. of this subsection, subpoenas shall not be issued by a participating state to gather evidence of conduct in another state that is lawful in that other state for the purpose of taking adverse action against a licensee's compact privilege or application for a compact privilege in that participating state;

4. Nothing in this compact shall authorize a participating state to impose discipline against a PA's compact privilege or to deny an application for a compact privilege in that participating state for the person's otherwise lawful practice in another state.

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STAFF COMMENT

The above paragraph would prohibit a compact state from imposing discipline on a compact privilege for breaking laws within that state that are not illegal elsewhere. For instance, an example of this would be marijuana laws across states.

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C. For purposes of taking adverse action, the participating state which issued the qualifying license shall give the same priority and effect to reported conduct

received from any other participating state as it would if the conduct had occurred within the participating state which issued the qualifying license. In so doing, that participating state shall apply its own state laws to determine appropriate action.

D. A participating state, if otherwise permitted by state law, may recover from the affected PA the costs of investigations and disposition of cases resulting from any adverse action taken against that PA.

E. A participating state may take adverse action based on the factual findings of a remote state, provided that the participating state follows its own procedures for taking the adverse action.

F. Joint investigations:

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STAFF COMMENT

There are many instances throughout the compact where the introduction language in a subsection/paragraph is incorrect or doesn't match up with the corresponding language. For instance, intro language will simply state a few words rather than outlining what the following language is about. The language above is just one example of this. This probably shouldn't be amended because it may be seen

as a substantial change to the compact, but it's something to be aware of.

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1. In addition to the authority granted to a participating state by its respective state PA laws and regulations or other applicable state law, any participating state may participate with other participating states in joint investigations of licensees;

2. Participating states shall share any investigative, litigation or compliance materials in furtherance of any joint or individual investigation initiated under this compact.

G. If an adverse action is taken against a PA's qualifying license, the PA's compact privilege in all remote states shall be deactivated until two (2) years have elapsed after all restrictions have been removed from the qualifying license. All disciplinary orders by the participating state which issued the qualifying license that impose adverse action against a PA's license shall include a statement that the PA's compact privilege is

deactivated in all participating states during the pendency of the order.

H. If any participating state takes adverse action, it promptly shall notify the administrator of the data system.

SECTION 7

ESTABLISHMENT OF THE PA LICENSURE COMPACT COMMISSION

A. The participating states hereby create and establish a joint government agency and national administrative body known as the PA licensure compact commission. The commission is an instrumentality of the compact states acting jointly and not an instrumentality of any one (1) state. The commission shall come into existence on or after the effective date of the compact as set forth in section 11.A. of this compact.

B. Membership, voting and meetings:

1. Each participating state shall have and be limited to one (1) delegate selected by that participating

state's licensing board or, if the state has more than one (1) licensing board, selected collectively by the participating state's licensing boards;

2. The delegate shall be either:

a. A current PA, physician or public member of a licensing board or PA council or committee; or

b. An administrator of a licensing board.

3. Any delegate may be removed or suspended from office as provided by the laws of the state from which the delegate is appointed;

4. The participating state licensing board shall fill any vacancy occurring in the commission within sixty (60) days;

5. Each delegate shall be entitled to one (1) vote on all matters voted on by the commission and shall otherwise have an opportunity to participate in the business and affairs of the commission. A delegate shall

vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telecommunications, video conference or other means of communication;

6. The commission shall meet at least one (1) time during each calendar year. Additional meetings shall be held as set forth in this compact and the bylaws;

7. The commission shall establish by rule a term of office for delegates.

C. The commission shall have the following powers and duties:

1. Establish a code of ethics for the commission;

2. Establish the fiscal year of the commission;

3. Establish fees;

4. Establish bylaws;

5. Maintain its financial records in accordance with the bylaws;

6. Meet and take such actions as are consistent with the provisions of this compact and the bylaws;

7. Promulgate 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 participating states;

8. Bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state licensing board to sue or be sued under applicable law shall not be affected;

9. Purchase and maintain insurance and bonds;

10. Borrow, accept or contract for services of personnel, including, but not limited to, employees of a participating state;

11. Hire employees and engage contractors, elect or appoint officers, fix compensation, define duties, grant such persons appropriate authority to carry out the purposes of this compact and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel and other related personnel matters;

12. Accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and receive, utilize and dispose of the same, provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest;

13. Lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold, improve or use any property, real, personal or mixed, provided that at all times the commission shall avoid any appearance of impropriety;

14. Sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property real, personal or mixed;

15. Establish a budget and make expenditures;

16. Borrow money;

17. Appoint committees, including standing committees composed 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;

18. Provide and receive information from, and cooperate with, law enforcement agencies;

19. Elect a chair, vice chair, secretary and treasurer and such other officers of the commission as provided in the commission's bylaws;

20. Reserve for itself, in addition to those reserved exclusively to the commission under the compact, powers that the executive committee may not exercise;

21. Approve or disapprove a state's participation in the compact based upon its determination as to whether the state's compact legislation departs in a material manner from the model compact language;

22. Prepare and provide to the participating states an annual report; and

23. Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of PA licensure and practice.

D. Meetings of the commission:

1. All meetings of the commission that are not closed pursuant to this subsection shall be open to the public. Notice of public meetings shall be posted on the commission's website at least thirty (30) days prior to the public meeting;

2. Notwithstanding subsection D.1. of this section, the commission may convene a public meeting by

providing at least twenty-four (24) hours' prior notice on the commission's website, and any other means as provided in the commission's rules, for any of the reasons it may dispense with notice of proposed rulemaking under section 9.L. of this compact;

3. The commission may convene in a closed, non-public meeting or non-public part of a public meeting to receive legal advice or to discuss:

a. Non-compliance of a participating state with its obligations under this compact;

b. The employment, compensation, discipline or other 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;

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

e. Accusing any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information that 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 investigative records compiled for law enforcement purposes;

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

j. Legal advice; or

k. Matters specifically exempted from disclosure by federal or participating states' statutes.

4. If a meeting, or portion of a meeting, is closed pursuant to this provision, the chair of the meeting or the chair's designee shall certify that the meeting or portion of the meeting may be closed and shall reference each relevant exempting provision;

5. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, 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 by a majority vote of the commission or order of a court of competent jurisdiction.

E. 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 participating state and may impose compact privilege fees on licensees of participating states to whom a compact privilege is granted to cover the cost of the operations and activities of the commission and its staff, which shall be in a total amount sufficient to cover its annual budget as approved by the commission each year for which revenue is not provided by other sources. The aggregate annual assessment amount levied on participating states shall be allocated based upon a formula to be determined by commission rule:

a. A compact privilege expires when the licensee's qualifying license in the participating state

from which the licensee applied for the compact privilege expires;

b. If the licensee terminates the qualifying license through which the licensee applied for the compact privilege before its scheduled expiration, and the licensee has a qualifying license in another participating state, the licensee shall inform the commission that it is changing to that participating state the participating state through which it applies for a compact privilege and pay to the commission any compact privilege fee required by commission rule.

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STAFF COMMENT

Lines 4 through 6 above are badly worded and it is unclear what exactly the provision is meant to say. Due to a lack of context regarding the meaning of the above paragraph, LSO will not amend it.

Furthermore, the above language is very broad and may be difficult to implement.

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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 participating states, except by and with the authority of the participating 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 financial review and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be subject to an annual financial review by a certified or licensed public accountant, and the report of the financial review shall be included in and become part of the annual report of the commission.

F. The executive committee:

1. The executive committee shall have the power to act on behalf of the commission according to the terms of this compact and commission rules;

2. The executive committee shall be composed of nine (9) members:

a. Seven (7) voting members who are elected by the commission from the current membership of the commission;

b. One (1) ex-officio, nonvoting member from a recognized national PA professional association; and

c. One (1) ex-officio, nonvoting member from a recognized national PA certification organization.

3. The ex-officio members will be selected by their respective organizations;

4. The commission may remove any member of the executive committee as provided in its bylaws;

5. The executive committee shall meet at least annually;

6. The executive committee shall have the following duties and responsibilities:

a. Recommend to the commission changes to the commission's rules or bylaws, changes to this compact legislation, fees to be paid by compact participating states such as annual dues and any commission compact fee charged to licensees for the compact privilege;

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

c. Prepare and recommend the budget;

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STAFF COMMENT

It is unclear what the term "budget" above is referring to.

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d. Maintain financial records on behalf of the commission;

e. Monitor compact compliance of participating states and provide compliance reports to the commission;

f. Establish additional committees as necessary;

g. Exercise the powers and duties of the commission during the interim between commission meetings, except for issuing proposed rulemaking or adopting commission rules or bylaws, or exercising any other powers and duties exclusively reserved to the commission by the commission's rules; and

h. Perform other duties as provided in the commission's rules or bylaws.

7. All meetings of the executive committee at which it votes or plans to vote on matters in exercising the powers and duties of the commission shall be open to the public and public notice of such meetings shall be given as public meetings of the commission are given;

8. The executive committee may convene in a closed, non-public meeting for the same reasons that the commission may convene in a non-public meeting as set forth in section 7.D.3. of this compact and shall announce the

closed meeting as the commission is required to under section 7.D.4. of this compact and keep minutes of the closed meeting as the commission is required to under section 7.D.5. of this compact.

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, both personally and 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 paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful or wanton misconduct of that person. The procurement of insurance of any type by the commission shall not in any way compromise or limit the immunity granted hereunder;

2. The commission shall defend any member, officer, executive director, employee and 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 as determined by the commission 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 their own counsel at their own expense; 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 and 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 commission 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;

4. 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 in any proceedings as authorized by commission rules;

5. Nothing herein shall be construed as a limitation on the liability of any licensee for professional malpractice or misconduct, which shall be governed solely by any other applicable state laws;

6. Nothing herein shall be construed to designate the venue or jurisdiction to bring actions for alleged acts of malpractice, professional misconduct, negligence or other such civil action pertaining to the

practice of a PA. All such matters shall be determined exclusively by state law other than this compact;

7. Nothing in this compact shall be interpreted to waive or otherwise abrogate a participating state's state action immunity or state action affirmative defense with respect to antitrust claims under the Sherman Act, Clayton Act or any other state or federal antitrust or anticompetitive law or regulation;

8. Nothing in this compact shall be construed to be a waiver of sovereign immunity by the participating states or by the commission.

SECTION 8

DATA SYSTEM

A. The commission shall provide for the development, maintenance, operation and utilization of a coordinated data and reporting system containing licensure, adverse action and the reporting of the existence of significant investigative information on all licensed PAs and applicants denied a license in participating states.

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STAFF COMMENT

Just as a point of clarification, it is unclear whether a sending state would be able to send "confidential" materials to a receiving state if that receiving state's confidentiality rules are less strict than the sending state's.

Furthermore, the data system described by this section would require the inclusion of information about ALL licensed PAs in a state, not just those practicing through a compact privilege. Then, in B. below, the compact seems to double back on itself and state that it only applies to PAs with compact privileges. The inconsistent language may be problematic when implementing the compact.

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B. Notwithstanding any other state law to the contrary, a participating state shall submit a uniform data set to the data system on all PAs to whom this compact is applicable, utilizing a unique identifier, as required by the rules of the commission, including:

1. Identifying information;

2. Licensure data;

3. Adverse actions against a license or compact privilege;

4. Any denial of application for licensure, and the reasons for such denial, excluding the reporting of any criminal history record information where prohibited by law;

5. The existence of significant investigative information; and

6. Other information that may facilitate the administration of this compact, as determined by the rules of the commission.

C. Significant investigative information pertaining to a licensee in any participating state shall only be available to other participating states.

D. The commission shall promptly notify all participating states of any adverse action taken against a licensee or a person applying for a license that has been reported to it. This adverse action information shall be available to any other participating state.

E. Participating states contributing information to the data system may, in accordance with state or federal law, designate information that shall not be shared with the public without the express permission of the contributing state. Notwithstanding any such designation, such information shall be reported to the commission through the data system.

F. Any information submitted to the data system that is subsequently expunged pursuant to federal law or the laws of the participating state contributing the information shall be removed from the data system upon reporting of such by the participating state to the commission.

G. The records and information provided to a participating state pursuant to this compact or through the data system, when certified by the commission or an agent thereof, shall constitute the authenticated business records of the commission, and shall be entitled to any associated hearsay exception in any relevant judicial, quasi-judicial or administrative proceedings in a participating state.

SECTION 9

RULEMAKING

A. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Commission rules shall become binding as of the date specified by the commission for each rule.

B. The commission shall promulgate reasonable rules in order to effectively and efficiently implement and administer this compact and achieve its purposes. A commission rule shall be invalid and have not force or effect only if a court of competent jurisdiction holds that the rule is invalid because the commission exercised its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted hereunder, or based upon another applicable standard of review.

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STAFF COMMENT

This subsection does not allow for a situation where, for example, the rule(s) are unconstitutional in a compact state.

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C. The rules of the commission shall have the force of law in each participating state, provided however that where the rules of the commission conflict with the laws of the participating state that establish the medical services a PA may perform in the participating state, as held by a court of competent jurisdiction, the rules of the commission shall be ineffective in that state to the extent of the conflict.

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STAFF COMMENT

The above subsection requires that a court determine that a conflict with state law exists, rather than simply relying on the state's statutes.

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D. If a majority of the legislatures of the participating states rejects a commission rule, by enactment of a statute or resolution in the same manner used to adopt this compact within four (4) years of the

date of adoption of the rule, then such rule shall have no further force and effect in any participating state or to any state applying to participate in the compact.

E. Commission rules shall be adopted at a regular or special meeting of the commission.

F. Prior to promulgation and adoption of a final rule or rules by the commission, and at least thirty (30) days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

1. On the website of the commission or other publicly accessible platform;

2. To persons who have requested notice of the Commission's notices of proposed rulemaking; and

3. In such other ways as the commission may by rule specify.

G. The notice of proposed rulemaking shall include:

1. The time, date and location of the public hearing on the proposed rule and the proposed time, date and location of the meeting in which the proposed rule will be considered and voted upon;

2. The text of the proposed rule and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person and the date by which written comments must be received; and

4. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing or provide any written comments.

H. 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.

I. If the hearing is to be held via electronic means, the commission shall publish the mechanism for access to the electronic hearing:

1. All persons wishing to be heard at the hearing shall as directed in the notice of proposed rulemaking, not less than five (5) business days before the scheduled date of the hearing, notify the commission of their desire to appear and testify at 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. All hearings shall be recorded. A copy of the recording and the written comments, data, facts, opinions and arguments received in response to the proposed rulemaking shall be made available to a person upon request;

4. Nothing in this section shall be construed as requiring a separate hearing on each proposed rule.

Proposed rules may be grouped for the convenience of the commission at hearings required by this section.

J. Following the public hearing the commission shall consider all written and oral comments timely received.

K. The commission shall, by majority vote of all delegates, take final action on the proposed rule and shall determine the effective date of the rule, if adopted, based on the rulemaking record and the full text of the rule:

1. If adopted, the rule shall be posted on the commission's website;

2. The commission may adopt changes to the proposed rule provided the changes do not enlarge the original purpose of the proposed rule;

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STAFF COMMENT

By allowing for substantive changes to the rules without stakeholder notice and participation, the above paragraph may not meet due process standards.

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3. The commission shall provide on its website an explanation of the reasons for substantive changes made to the proposed rule as well as reasons for substantive changes not made that were recommended by commenters;

4. The commission shall determine a reasonable effective date for the rule. Except for an emergency as provided in subsection L. of this section, the effective date of the rule shall be no sooner than thirty (30) days after the commission issued the notice that it adopted the rule.

L. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule with twenty-four (24) hours prior notice, without the opportunity for comment or hearing, provided that the usual rulemaking procedures provided in this compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes

of this provision, an emergency rule is one (1) that must be adopted immediately by the commission in order to:

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STAFF COMMENT

The above subsection does not provide a timeline for how long emergency rules can be in effect.
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1. Meet an imminent threat to public health, safety or welfare;

2. Prevent a loss of commission or participating state funds;

3. Meet a deadline for the promulgation of a commission 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 commission rule 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 website of the commission. The revision shall be subject to challenge by any person for a period of thirty (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 as set forth in the notice of revisions and delivered to 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 shall not take effect without the approval of the commission.

N. No participating state's rulemaking requirements shall apply under this compact.

SECTION 10

OVERSIGHT, DISPUTE RESOLUTION AND ENFORCEMENT

A. Oversight:

1. The executive and judicial branches of state government in each participating state shall enforce this compact and take all actions necessary and appropriate to implement the compact;

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. Nothing herein shall affect or limit the selection or propriety of venue in any action against a licensee for professional malpractice, misconduct or any such similar matter;

3. The commission shall be entitled to receive service of process in any proceeding regarding the enforcement or interpretation of the compact or the commission's rules and shall have standing to intervene in such a proceeding for all purposes. Failure to provide the commission with service of process shall render a judgment

or order in such proceeding void as to the commission, this compact or commission rules.

B. Default, technical assistance and termination:

1. If the commission determines that a participating state has defaulted in the performance of its obligations or responsibilities under this compact or the commission rules, the commission shall provide written notice to the defaulting State and other participating states. The notice shall describe the default, the proposed means of curing the default and any other action that the commission may take and shall offer remedial training and specific technical assistance regarding the default;

2. If a state in default fails to cure the default, the defaulting state may be terminated from this compact upon an affirmative vote of a majority of the delegates of the participating states, and all rights, privileges and benefits conferred by this compact upon such state may be terminated on the effective date of termination. A cure of the default shall not relieve the

offending State of obligations or liabilities incurred during the period of default;

3. Termination of participation in this compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature and to the licensing boards of each of the participating states;

4. A state that has been terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination;

5. The commission shall not bear any costs related to a state that is found to be in default or that has been terminated from this compact, unless agreed upon in writing between the commission and the defaulting state;

6. The defaulting state may appeal its termination from the compact by the commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees;

7. Upon the termination of a state's participation in the compact, the state shall immediately provide notice to all licensees within that state of such termination:

a. Licensees who have been granted a compact privilege in that state shall retain the compact privilege for one hundred eighty (180) days following the effective date of such termination;

b. Licensees who are licensed in that state who have been granted a compact privilege in a participating state shall retain the compact privilege for one hundred eighty (180) days unless the licensee also has a qualifying license in a participating state or obtains a

qualifying license in a participating state before the one hundred eighty (180) day period ends, in which case the compact privilege shall continue.

C. Dispute resolution:

1. Upon request by a participating state, the commission shall attempt to resolve disputes related to this compact that arise among participating states and between participating and non-participating states;

2. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement:

1. The commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact and rules of the commission;

2. If compliance is not secured after all means to secure compliance have been exhausted, by majority vote,

the commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the commission has its principal offices, against a participating state in default to enforce compliance with the provisions of this compact and the commission's promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's 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.

E. Legal action against the commission:

1. A participating state may initiate legal action against the commission in the U.S. District Court for the District of Columbia or the federal district where the commission has its principal offices to enforce compliance with the provisions of the compact and its

rules. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees;

2. No person other than a participating state shall enforce this compact against the commission.

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STAFF COMMENT

The above paragraph is likely unenforceable.

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SECTION 11

DATE OF IMPLEMENTATION OF THE PA LICENSURE COMPACT COMMISSION

A. This compact shall come into effect on the date on which this compact statute is enacted into law in the seventh participating state:

1. On or after the effective date of the compact, the commission shall convene and review the

enactment of each of the states that enacted the compact prior to the commission convening ("charter participating states") to determine if the statute enacted by each such charter participating state is materially different than the model compact:

a. A charter participating state whose enactment is found to be materially different from the model compact shall be entitled to the default process set forth in section 10.B. of this compact;

b. If any participating state later withdraws from the compact or its participation is terminated, the commission shall remain in existence and the compact shall remain in effect even if the number of participating states should be less than seven (7). Participating states enacting the compact subsequent to the commission convening shall be subject to the process set forth in section 7.C.21. of this compact to determine if their enactments are materially different from the model compact and whether they qualify for participation in the compact.

2. Participating states enacting the compact subsequent to the seven (7) initial charter participating states shall be subject to the process set forth in section 7.C.21. of this compact to determine if their enactments are materially different from the model compact and whether they qualify for participation in the compact;

3. All actions taken for the benefit of the commission or in furtherance of the purposes of the administration of the compact prior to the effective date of the compact or the commission coming into existence shall be considered to be actions of the commission unless specifically repudiated by the commission.

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STAFF COMMENT

It is unclear whether actions taken before the Commission comes into existence could legally be enforced. The above paragraph may be inaccurate.

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B. Any state that joins this compact shall be subject to the commission's rules and bylaws as they exist on the date on which this compact becomes law in that state. Any rule that has been previously adopted by the commission

shall have the full force and effect of law on the day this compact becomes law in that state.

C. Any participating state may withdraw from this compact by enacting a statute repealing the same:

1. A participating state's withdrawal shall not take effect until one hundred eighty (180) days after enactment of the repealing statute. During this one hundred eighty (180) day period, all compact privileges that were in effect in the withdrawing state and were granted to licensees licensed in the withdrawing state shall remain in effect. If any licensee licensed in the withdrawing state is also licensed in another participating state or obtains a license in another participating state within the one hundred eighty (180) days, the licensee's compact privileges in other participating states shall not be affected by the passage of the one hundred eighty (180) days.

2. Withdrawal shall not affect the continuing requirement of the state licensing boards of the withdrawing state to comply with the investigative and

adverse action reporting requirements of this compact prior to the effective date of withdrawal;

3. Upon the enactment of a statute withdrawing a state from this compact, the state shall immediately provide notice of such withdrawal to all licensees within that state. Such withdrawing state shall continue to recognize all licenses granted pursuant to this compact for a minimum of one hundred eighty (180) days after the date of such notice of withdrawal.

D. Nothing contained in this compact shall be construed to invalidate or prevent any PA licensure agreement or other cooperative arrangement between participating states and between a participating state and non-participating state that does not conflict with the provisions of this compact.

E. This compact may be amended by the participating states. No amendment to this compact shall become effective and binding upon any participating state until it is enacted materially in the same manner into the laws of all participating states as determined by the commission.

SECTION 12

CONSTRUCTION AND SEVERABILITY

A. This compact and the commission's rulemaking authority shall be liberally construed so as to effectuate the purposes and the implementation and administration of the compact. Provisions of the compact expressly authorizing or requiring the promulgation of rules shall not be construed to limit the commission's rulemaking authority solely for those purposes.

B. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is held by a court of competent jurisdiction to be contrary to the constitution of any participating state, a state seeking participation in the compact, or of the United States, or the applicability thereof to any government, agency, person or circumstance is held to be unconstitutional by a court of competent jurisdiction, the validity of the remainder of this compact and the applicability thereof to any other government, agency, person or circumstance shall not be affected thereby.

C. Notwithstanding subsection B. of this section, the commission may deny a state's participation in the compact or, in accordance with the requirements of section 10.B. of this compact, terminate a participating state's participation in the compact, if it determines that a constitutional requirement of a participating state is, or would be with respect to a state seeking to participate in the compact, a material departure from the compact. Otherwise, if this compact shall be held to be contrary to the constitution of any participating state, the compact shall remain in full force and effect as to the remaining participating states and in full force and effect as to the participating state affected as to all severable matters.

SECTION 13

BINDING EFFECT OF COMPACT

A. Nothing herein prevents the enforcement of any other law of a participating state that is not inconsistent with this compact.

B. Any laws in a participating state in conflict with this compact are superseded to the extent of the conflict.

C. All agreements between the commission and the participating states are binding in accordance with their terms.

Section 2. W.S. 7-19-106(a)(xxiii), 7-19-201(a)(xvii), 33-26-102(a)(ix) and (x), 33-26-501(a)(ii), 33-26-503(b) by creating a new paragraph (viii), 33-26-504 by creating a new subsection (h), 33-26-506(a) and 33-26-507(a) are amended to read:

7-19-106. Access to, and dissemination of, information.

(a) Criminal history record information shall be disseminated by criminal justice agencies in this state, whether directly or through any intermediary, only to:

(xxiii) The board of medicine for purposes of obtaining background information on applicants for licensure, compact privileges under W.S. 33-26-801 and 33-

26-802 or certification by the board whose application or other information received by the board indicates the applicant has or may have been convicted of a crime, and for purposes of investigation of complaints and disciplinary action against licensees of the board;

7-19-201. State or national criminal history record information.

(a) The following persons shall be required to submit to fingerprinting in order to obtain state and national criminal history record information:

(xvii) All persons applying for licensure, compact privileges under W.S. 33-26-801 and 33-26-802 or certification to the Wyoming board of medicine on or after July 1, 2009, whose application or other information received by the board indicates that the applicant has or may have been convicted of a crime, and any licensee of the board of medicine upon written request from the board of medicine as part of an ongoing investigation of or disciplinary action against the licensee;

33-26-102. Definitions.

(a) As used in this chapter:

(ix) "License" means a license to practice medicine in this state issued by the board pursuant to this chapter, including a compact privilege granted pursuant to the physician assistant licensure compact under W.S. 33-26-801 and 33-26-802;

(x) "Licensee" means any person licensed by the board under this chapter, including a person granted a compact privilege pursuant to the physician assistant licensure compact under W.S. 33-26-801 and 33-26-802;

33-26-501. Definitions.

(a) As used in this article:

(ii) "License" means a license to practice medicine as a physician assistant in this state. "License" shall include a compact privilege granted pursuant to the

physician assistant licensure compact under W.S. 33-26-801 and 33-26-802;

33-26-503. Board powers and duties.

(b) The board shall:

(viii) Grant or refuse to grant a compact privilege to practice as a physician assistant in the state to a holder of a qualifying license pursuant to requirements of the physician assistant licensure compact under W.S. 33-26-801 and 33-26-802.

33-26-504. License required; application; qualifications; consideration of applications.

(h) The board may grant a compact privilege to practice as a physician assistant in the state to a holder of a qualifying license pursuant to the requirements of the physician assistant licensure compact under W.S. 33-26-801 and 33-26-802.

33-26-506. Term of license; renewal; duplicates.

(a) All licenses, including compact privileges issued pursuant to the physician assistant licensure compact under W.S. 33-26-801 and 33-26-802, other than temporary licenses expire annually on December 31. A physician assistant may renew his license by completing and submitting a renewal application form published by the board and renewal fee to the board prior to expiration of his current license.

33-26-507. License fees.

(a) The board shall, by regulation set appropriate license application, renewal and reactivation fees, examination fees, fees related to compact privileges issued pursuant to the physician assistant licensure compact under W.S. 33-26-801 and 33-26-802 and fees for information verification or document production and other services of the board to be charged under this chapter.

Section 3. This act is effective July 1, 2027.

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STAFF COMMENT

LSO notes that the compact outlined in 27LSO-0246 Physician Assistant Licensure Compact contains many provisions that are substantially similar to existing licensure compacts, including Wyoming's Nurse Licensure Compact and Advanced Practice Registered Nurse Compact, W.S. 33-21-201 and 33-21-301.

While similar law has been enacted in Wyoming, LSO encourages the Committee to carefully consider the terms of the compact and its various requirements. While not a thorough analysis of this compact, there are a number of provisions that deserve attention. Among other things, the compact:

(1) The compact states that the compact commission is entitled to receive service of process in any proceeding regarding the enforcement or interpretation of the compact and has standing to intervene in such proceedings for all purposes. The compact states that failure to provide service of process will render a judgment or order void as to the commission, this compact or its promulgated rules. This provision of the compact is likely unenforceable under Wyoming law. See Sec. 10.A.3.

(2) Gives rules adopted by the compact's commission the force and effect of Wyoming statutory law and requires Wyoming's compliance with the rules and with the commission's bylaws. The commission's rules and bylaws are adopted with only one Wyoming vote (by Wyoming's compact delegate). This may be contrary to Wyoming law that mandates that the passage of laws require a majority vote of the legislature and the governor's signature. See Sec. 7.B.1., 7.C.7. and 11.B.

(3) Establishes that the venue of any dispute is in the jurisdiction where the principal office of the commission is located or a specified federal district court. Disputes regarding Wyoming's removal from the compact must be brought where the commission's principal office is located or in the U.S. District Court for the District of Columbia. Additionally, the Commission may initiate legal action against a member state only in the venue stated above. See Sec. 7.G.4. and 10.D.2.

(4) The compact obligates the commission to expend its resources defending and indemnifying its members, officers, etc., against claims and liabilities arising out of commission-related activities, unless the conduct was willful or wanton. The compact also extends immunity to all commission employees. See Sec. 7.G.

(5) The compact establishes that there will be an annual financial assessment charged to each member state and also states that the commission may impose compact privilege fees on licensees in addition to what individual states require. See Sec. 7.E.3.

(6) Wyoming can withdraw from the compact, but any withdrawal will not take effect until six months after enactment of a repealing statute, during which time Wyoming must comply with the compact and be responsible for all financial obligations of the compact. Furthermore, a defaulting state would be responsible for bearing any costs related to the default. See Sec. 11.C. Wyoming could essentially be giving away future legislative authority. Legislation takes effect on a specified effective date after the Governor signs laws, but this section of the compact seems to conflict with that.

(7) Wyoming may move to withdraw or repeal a rule up to four years after its passage. This may be problematic because Wyoming often amends or invalidates rules more than four years after their adoption. See Sec. 9.D.

(8) Wyoming must provide files and information regarding the investigation and discipline, if any, of physician assistants in Wyoming and other member states upon request. See Sec. 8.A.

(9) While the compact may be amended, no amendment will become effective and binding until it is enacted into the laws of all member states. See Sec. 11.E.

(10) The compact states that any state law in conflict with the compact's provisions will be superseded by the compact. This may be unenforceable under Wyoming law. Wyoming likely cannot give up and assign its authority to out-of-state entities. See Sec. 13.B.

(11) There are many instances throughout the compact where there are typographical and spelling errors, as well as provisions that do not make sense or seem to contradict each other. However, these errors could not necessarily be amended because that may be seen as a substantive change to the compact.

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(END)