
Wisconsin Legislative Council

MINUTES



STUDY COMMITTEE ON OCCUPATIONAL LICENSES

411 South, State Capitol
Madison, WI
September 27, 2022
10:00 a.m. – 4:05 p.m.

CALL TO ORDER AND ROLL CALL

Chair Stafsholt called the meeting to order and determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Sen. Rob Stafsholt, Chair; Rep. Shae Sortwell, Vice Chair; Sen. Janis Ringhand; Rep. Supreme Moore Omokunde; and Public Members Monica Johnson, Stanley Johnson, Jessica Ollenburg, Albert Walker, and Ann Zenk.

COUNCIL STAFF PRESENT: Margit Kelley, Principal Attorney; and Patrick Ward, Staff Attorney.

APPEARANCES: Ryan Nunn, Assistant Vice President for Applied Research, Community Development and Engagement, Federal Reserve Bank of Minneapolis; Jill McNutt, Lisa Land, and Justine Kopp, Wisconsin Art Therapy Association; Ann Wingate, Hancock Center for Dance/Movement Therapy; Julie Miller, Dance/Movement Therapy Certification Board; Nancy Dexter-Schabow, Wisconsin Chapter for Music Therapy; Judy Simpson, American Music Therapy Association; Matt Shafer, Deputy Program Director, Council of State Governments, National Center for Interstate Compacts; Kyle Koenen, Policy Director, and Anthony LoCoco, Deputy Counsel, Wisconsin Institute for Law & Liberty; Michael Jahr, Vice President of Communications and Government Relations, Badger Institute; and Brian S.W. Tobias, Director, Colorado Department of Regulatory Agencies, Colorado Office of Policy, Research & Regulatory Reform.

APPROVAL OF THE MINUTES OF THE AUGUST 2, 2022 MEETING

Senator Ringhand moved to approve the minutes from the August 2, 2022, meeting of the committee. The motion was seconded by Representative Sortwell and approved by unanimous consent.

COMMITTEE DISCUSSION OF MEMO NO. 1, *PRELIMINARY OPTIONS FOR DISCUSSION RELATING TO THE WORKLOAD FOR PROCESSING OCCUPATIONAL LICENSING APPLICATIONS AND RENEWALS (SEPTEMBER 19, 2022)*

Margit Kelley, Principal Attorney, and Patrick Ward, Staff Attorney, provided an overview of Legislative Council [Memo No. 1](#), *Preliminary Options for Discussion Relating to the Workload for Processing Occupational Licensing Applications and Renewals* (September 19, 2022).

Committee members provided some brief, preliminary thoughts regarding the workload for processing occupational licensing applications and renewals. Senator Ringhand observed that according to recent news reports nursing home staffing is experiencing even worse staffing shortages than during the beginning of the COVID-19 pandemic, which underlines the importance of efficient application processing. Representative Sortwell questioned whether the historical reasons for needing renewal applications might no longer apply, and whether continuing education could be required without a renewal application process. Representative Sortwell also commented that if the Department of Safety and Professional Services (DSPS) and credentialing boards could accept an employer's background check, DSPS and credentialing boards would not need to repeat an applicant's criminal history review. Ms. Zenk suggested that a four-year renewal period, or a renewal period that is tied to various occupations' national board certification periods, could reduce complexity in the renewal process. Ms. Zenk also commented that for tracking the number of days it takes to issue a final determination on an application, a time period that begins with the person's initial application submission, or date that DSPS processes an application fee, would better reflect the actual total application processing period.

Committee members did not have an opportunity to engage in a full discussion of the options and Chair Stafsholt stated that the committee's next meeting will include further discussion time on these topics.

PRESENTATION BY RYAN NUNN, ASSISTANT VICE PRESIDENT FOR APPLIED RESEARCH, COMMUNITY DEVELOPMENT AND ENGAGEMENT, FEDERAL RESERVE BANK OF MINNEAPOLIS

Mr. Nunn gave an overview of licensing and its economic and employment effects. He explained that licensing is a core institution that controls access to employment. He provided information about trends in employment, prices, and wages, and how licensing affects these trends.

Mr. Nunn discussed licensing considerations in health care. He noted that licensure in health-related professions is especially important since a large portion of United States resources are spent on these services. Mr. Nunn noted that licensure itself is shown to improve overall health and safety in health care services, but that more stringent licensure requirements restrict access to health care without observable improvements to the quality of that care.

Mr. Nunn explained the burdens that licensure places on particular groups; factors such as differing state licensure requirements, criminal records, and immigration status are barriers to licensure for certain individuals. Mr. Nunn discussed reform options related to increasing the understanding of how licensing affects particular groups, enhancing interstate reciprocity, and identifying and eliminating unnecessary licensure rules. Mr. Nunn also commented that best practices in regulatory oversight include truly tailoring licensure requirements to health and safety issues, considering credentialing alternatives, minimizing supervision requirements and scope of practice restrictions, reducing barriers related to criminal conviction records, and engaging in detailed sunrise and sunset assessments of risk.

Questions from committee members focused on the relationship of licensure to consumer costs, the added value that licensure provides in certain fields, the effect of criminal history disqualifications, and best practices for the structure and resources used in sunrise and sunset reviews.

PRESENTATIONS ON CREDENTIALING FOR CREATIVE ARTS THERAPIES

The committee heard testimony from art, dance, and music therapists in support of continuing to credential the creative arts therapies in Wisconsin.

Nancy Dexter-Schabow opened the discussion by noting that the statutory definition of the practice of psychology is very broad, and includes observation, description, evaluation, interpretation,

prediction, or modification of human behavior by the application of psychological principles, methods, or procedures, in exchange for a fee. Ms. Dexter-Schabow noted that this means that a creative arts therapist must either practice under the supervision of a licensed psychologist, or under their own credential, in order to provide any services that include observation, evaluation, or modification of human behavior through psychological principles and methods.

Jill McNutt, Lisa Land, and Justine Kopp described how art therapists would be impacted by removal of their licenses. They explained how their services assist a variety of clientele, including children in foster care, veterans with post-traumatic stress disorder (PTSD), persons with verbal or other processing disabilities, such as persons with autism, and many others. They noted that for many of these clients, talk therapy is ineffective, and that if art therapist licensure is removed, their clients will lose both private insurance and Medical Assistance (MA) coverage for their services. They also stated that the public will risk receiving lower quality services from less knowledgeable persons, as licensure is the only method for clients to confirm a provider's professional knowledge and status. In response to questions from members, they stated that the licensure application process is very easy, with just an application form and fee to verify an applicant's national board certification, and that state regulation helps to ensure that an authorized scope of practice is followed and is not misused by well-meaning people who have art training, but not art therapy training.

Julie Miller briefly explained the credentialing process for dance therapists. **Ann Wingate** briefly responded to questions on the number of dance therapists in the state.

Judy Simpson provided information about music therapists, their services, and the credentialing process. Ms. Simpson stated that certification prevents unqualified individuals from practicing, and she recommended similar licensure across all states.

Ms. Dexter-Schabow concluded the panel by noting that the credentialing requirements and issues for the creative arts therapies are similar, but each has some variation. She noted that for each of the creative arts therapies, many of the clients are nonverbal, and that credentialing is required for the clients to receive their services through private insurance or MA, and that there are long waiting lists for their services. She also noted persons who attempt these methods without proper training risk of retraumatization or harm from misunderstanding the therapeutic needs and processes.

Committee questions focused on the number of creative arts therapists in Wisconsin and the number of clients served, methods of therapist regulation and supervision, and the clientele needs and reimbursement requirements through the Medicaid waiver programs.

PRESENTATION BY MATT SHAFER, DEPUTY PROGRAM DIRECTOR, COUNCIL OF STATE GOVERNMENTS, NATIONAL CENTER FOR INTERSTATE COMPACTS

Mr. Shafer presented an overview of interstate compacts for occupational licenses. Mr. Shafer explained the concept of an interstate compact generally and how and why interstate compacts are used for occupational licenses. He stated that benefits of occupational licensure compacts include facilitating multistate practice, maintaining or improving public health and safety, and preserving state authority over professional licensing and an occupation's scope of practice.

Mr. Shafer discussed the active occupational licensure compacts and the states that are members of compacts, including which compacts Wisconsin has joined as a member and those it has not. He also discussed the occupational licensure compacts that are in development.

Then, Mr. Shafer compared interstate compacts to universal recognition policies. He noted that for certain occupations, especially those in the health field where there may be a heightened public safety concern, interstate compacts may offer a more appropriate mix of portability and public protection than

universal recognition policies. Mr. Shafer also noted the variations in how current occupational licensure compacts provide reciprocity and indicated that each approach to reciprocity is tailored to the needs of the profession.

Mr. Shafer finished his presentation by detailing the benefits of occupational licensure compacts to practitioners, licensing boards, and states.

Questions for Mr. Shafer focused on how to ensure quality and skills are comparable across states, how criminal history is monitored and shared between compact states, whether universal recognition is more appropriate than compacts, which state's rules apply in the case of telehealth, and whether interstate compacts create insurance reimbursement issues.

PRESENTATION BY KYLE KOENEN, POLICY DIRECTOR, AND ANTHONY LOCOCO, DEPUTY COUNSEL, WISCONSIN INSTITUTE FOR LAW & LIBERTY

Mr. Koenen summarized studies detailing the growth of occupational licensing in Wisconsin and the effect of occupational licensing on job growth and consumer costs. He also summarized studies that compared Wisconsin occupational licensing with other states.

As a way to address licensing delays, he recommended DSPS implement a performance dashboard that tracks credential processing times and goals.

Mr. Koenen described how holders of occupational licenses face barriers with respect to interstate mobility and stated that reciprocal agreements and interstate compacts partially address this issue. He then described universal license recognition and recommended the committee adopt a version of the policy that does not require residency in Wisconsin.

Mr. Koenen detailed a potential sunrise review process and summarized the purpose of sunrise reviews and recent research regarding their effectiveness. He noted that the report produced by a sunrise review would be similar to fiscal notes that currently accompany certain bill drafts. He also noted that the reviewing entity should be a nonpartisan, nonpolitical entity and emphasized that the criteria that the review considers is important. He stated that one of the criteria should be considering the least restrictive means to accomplish the regulatory goal and explained alternatives to licensing.

Mr. Koenen finished by generally describing sunset reviews and proposing a sunset process. He noted that a sunset review can be an opportunity to review specific aspects of an occupational license.

Mr. LoCoco presented an overview of the model right to earn a living act. He explained that, under current law, it is very difficult for an individual to successfully challenge an occupational license regulation because the scrutiny standard applied by a court in challenges to occupational licensing regulations is too low. He stated that this allows some unjust laws to exist because they cannot be shown to be arbitrary in court. He recommended creating a right to petition an agency to repeal or modify regulations and a private cause of action with an intermediate standard of review and fee shifting provisions. He noted that this standard is more stringent than the current standard but not the standard applied by a court in challenges to the constitutionality of certain laws. He also recommended a sunset review of existing occupational regulations and preempting local governments from creating their own occupational licenses.

Questions for Mr. Koenen focused on the relationship between wages and employment and more licensing, insurance reimbursement, and who should conduct a sunset review. Questions for Mr. LoCoco focused on the standard for review in the right to earn a living act and the legal reasoning of a Wisconsin Supreme Court decision that Mr. LoCoco used to illustrate the current scrutiny standard used by courts.

PRESENTATION BY MICHAEL JAHR, VICE PRESIDENT OF COMMUNICATIONS AND GOVERNMENT RELATIONS, BADGER INSTITUTE

Mr. Jahr briefly described the growth in the number of licensed occupations and the difficulties that some applicants have while waiting for licensure approval. He also summarized some recent studies that have worked on quantifying the effects of licensure, including results that showed reduced employment, increased prices, and increased wages. He noted that these effects can make it harder to enter a field, particularly for persons with lower incomes, and that licensure requirements can hinder worker mobility.

Mr. Jahr summarized the various levels of licensure, shown in an inverted pyramid that begins broadly with market competition alternatives to licensure and ends with the narrowest option of full licensure status. He noted that there are many options between having no licensure and requiring full licensure status.

Mr. Jahr provided a number of recommendations to the committee, including adopting universal licensure recognition to make it easier for a licensed person from another state to apply for a Wisconsin license, repealing licensure (or lowering the type of licensure) for occupations that have no educational requirements, utilizing sunrise and sunset reviews, enacting the model right to earn a living act, authorizing provisional licensing while an application is pending, reducing the “lookback” period for review of an applicant’s criminal history record, and improving transparency in the credentialing boards’ memberships.

Questions for Mr. Jahr focused on who provides protections from harm, how to make a faster application process, what kind of hierarchy to use to determine problematic professions, and what kind of data is available from DSPS.

PRESENTATION BY BRIAN S.W. TOBIAS, DIRECTOR, COLORADO DEPARTMENT OF REGULATORY AGENCIES, COLORADO OFFICE OF POLICY, RESEARCH & REGULATORY REFORM

Mr. Tobias presented an overview of Colorado’s agency structure and described the review functions of the Colorado Office of Policy, Research & Regulatory Reform (commonly referred to as COPRRR). He noted that the office has a staff of 5.5 positions, does not regulate occupations, and although it is attached to the regulatory agency, is an independent office. Mr. Tobias stated that COPRRR conducts two types of sunset reviews, sunrise reviews, reviews of proposals for mandatory continuing education, and regulatory notice and cost-benefit analyses.

Mr. Tobias described the annual cycle of Title 24 sunset reviews, and stated that those reviews are scheduled directly into an occupation’s statutory provisions. He noted that the primary factor is whether the regulatory structure is necessary to protect the public, and if it is necessary, whether the structure is the least restrictive form. Mr. Tobias briefly described the additional statutory criteria that flow from that primary, balancing consideration, including the economic impact of regulation, the number of complaints, and the effect of criminal history reviews and other entry requirements on equity, diversity, and inclusivity, among other factors. Mr. Tobias also discussed the importance of stakeholder input in their review, and noted that a review considers not just whether the program is needed to protect the public, but also whether the specific oversight could be improved.

Mr. Tobias briefly described the Title 2 sunset reviews of agency advisory committees. He noted that this is a more abbreviated, limited review, with no statutory criteria.

Mr. Tobias lastly described COPRRR's sunrise review, which is initiated by a citizen application for proposed regulation of an occupation. He stated that applications are accepted at two deadlines each year, June 30 and December 31, with a COPRRR report due six months later. Mr. Tobias stated that the primary factor is whether the public is harmed without regulation of the occupation, and noted that applicants are asked to provide specific examples of harm. The remaining four criteria include whether a minimum level of competency is required for the profession, to what degree independent judgment is used in the profession, what are the alternative forms of regulation, and whether criminal history reviews create collateral consequences for applicants.

In response to questions from committee members on the sunset review process, Mr. Tobias stated that COPRRR produces a detailed report in a Title 24 review that is submitted to a legislative committee in the relevant subject area. He noted that the committee holds a sunset hearing where COPRRR presents the report, and the committee takes public testimony and votes on whether to introduce a bill based on the report for submission to the regular legislative process. In response to a question on where there might be pushback in the process, Mr. Tobias noted that the process is well-recognized and their office is known for providing objective reports, even if the stakeholders do not agree with a recommendation or the Legislature is not ready to act on a topic. In response to a question on sunset criteria, Mr. Tobias noted that the relationship between licensure and health insurance provider coverage is not an explicit factor, but may be considered in the context of any effect on access to services. In response to a request for an example of an occupation that was recommended to be eliminated and an example of an occupation that was recommended to continue, Mr. Tobias stated that he would forward sample reports.

PLANS FOR FUTURE MEETINGS

Chair Stafsholt reminded members that handouts and additional materials from the speakers and others are available on the [study committee's website](#), and that the committee has scheduled the following subsequent meetings:

- October 12, 2022, in Room 411 South, State Capitol.
- November 15, 2022, in Room 411 South, State Capitol.
- December 13, 2022, in Room 411 South, State Capitol.

ADJOURNMENT

The committee adjourned at 4:05 p.m.

TB:MSK:PW:ksm