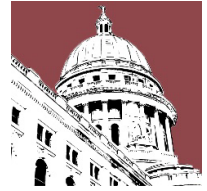

Wisconsin Legislative Council

STUDY COMMITTEE MEMO



Memo No. 2

TO: MEMBERS OF THE STUDY COMMITTEE ON OCCUPATIONAL LICENSES

FROM: Margit Kelley, Principal Attorney, and Patrick Ward, Staff Attorney

RE: Preliminary Options for Discussion Relating to the Elimination of Certain Credentials, Easing Reciprocity, and Creating Systems for Review of Proposed and Existing Credentials

DATE: October 5, 2022

This memo provides a preliminary list of potential topics of discussion for the October 12, 2022, meeting of the Study Committee on Occupational Licenses. The topics below reflect the issues the committee is directed to review, as addressed by presenters and committee members during the study committee's August 2 and September 27, 2022, meetings.

The list is intended to provide a starting point for possible topics the committee may wish to more closely review and consider in preliminary bill drafts.

AGENCY'S 2018 RECOMMENDATION

Eliminate any of the occupational licenses recommended for elimination in the Department of Safety and Professional Services (DSPS) 2018 Legislative Report on the [Wisconsin Occupational Licensing Study](#) that are administered by DSPS or a credentialing board.

RECIPROCITY

Join any of the following interstate compacts relevant to DSPS and the credentialing boards:

- [Advanced Practice Registered Nurses](#). [If Wisconsin is eligible.]
- [Audiology and Speech-Language Pathology](#).
- [Licensed Professional Counselor](#).
- Others that are in development:
 - [Cosmetology](#).
 - [Dentistry and Dental Hygiene](#).
 - [Massage Therapy](#).
 - [Physician's Assistant/Associate](#).
 - [Social Work](#).

Specify that if a profession requires other states' standards for education to be substantially equivalent to the standards of this state for a reciprocal credential to be issued, DSPS or a credentialing board may

assume that course requirements were substantially equivalent if the degree was granted by an accredited institution and the person has been practicing, in good standing, for a certain number of years (such as three, five, or 10 years) prior to submitting the application.

Create universal licensure recognition. Aspects could include, for example:

- Requiring an **examination on state law** related to the practice, if required for the occupation.
- Requiring a certain number of years of **experience** immediately preceding an application for universal licensure recognition, such as one, two, or five years, or specifying that DSPS or a credentialing board may establish the minimum amount of experience, by rule.
- Requiring **residency** in Wisconsin.
- Requiring that under the other state's **scope of practice**, the person has been authorized to perform acts substantially the same as those acts authorized by the credential granted in Wisconsin.
- Requiring that the other state's **training** and examination requirements are substantially equivalent to Wisconsin requirements.
- Specifying **which occupations** may have universal licensure recognition, such as certain identified occupations or all occupations except those specifically exempted, or specifying that DSPS or a credentialing board may choose to allow universal licensure recognition if it does so by rule.

For selected occupations, require DSPS to review whether the credentialing requirements in selected states are substantially equivalent. Require DSPS to publish its review on a public webpage and maintain the validity of the information. The following aspects could be considered in developing the process:

- Occupations could be prioritized by the number of credential holders, identified shortages, or occupations deemed critical to certain public purposes (such as health, housing, or economic development).
- Occupations could be deprioritized if Wisconsin has joined the occupation's interstate compact.
- DSPS could be required to consult with other agencies, including the Department of Workforce Development, in identifying priority occupations.
- States could be prioritized by those bordering Wisconsin and those with significant populations (such as California, Texas, Florida, and New York).

SUNRISE

Require DSPS or a credentialing board to submit a public policy opinion on legislation that proposes a new occupational credential. The opinion must be made by the department or board that is responsible for oversight of the credential, and by any board that is proposed to be attached to a new board proposed in the legislation. Similar to the fiscal estimate process, require receipt of a public policy opinion before a standing committee holds a public hearing or vote, or before any vote is taken by either house of the Legislature, if a committee does not hold a hearing or vote. Specify that the submission must provide a considered opinion of the effect and desirability of the legislation as a matter of public policy, or, alternatively, specify a list of factors that must be considered in the opinion.

Require an author of a bill that proposes a new occupational credential to prepare an analysis that is attached to the bill. Information required in the analysis could include, for example:¹

- A description of the occupation proposed for regulation, including a list of associations, organizations, and other groups representing the practitioners in this state, and an estimate of the number of practitioners.
- A description of the problem or problems to be solved by regulation and the reasons why regulation is necessary.
- A statement of support signed by at least 10 members of the occupation or at least 10 individuals who are not members of the occupation.
- The reasons why certification, registration, licensure, or other type of regulation is being proposed and why that regulatory alternative was chosen.
- The benefit to the public that would result from the proposed regulation.
- A comparison with the approaches used by Wisconsin's neighboring states, Illinois, Iowa, Michigan, and Minnesota.²

Create a specific process for review of proposed new credentials. Aspects could include the following:

- Initiation of the review process by one of the following methods:
 - Submission of an application by a member of the public.
 - Introduction of a bill by a legislator.
- A deadline within the legislative process to initiate a review, such as December 31 of each odd- or even-numbered year.
- Performance of a review by:
 - An entity in the executive branch, such as DSPS, another agency, or a newly created executive office or commission.
 - An entity in the legislative branch, such as the relevant legislative standing committees or a new, designated joint committee.
- Criteria considered in a review, such as the following:³
 - Whether regulation is necessary to protect the public health, safety, and welfare.⁴
 - Whether the public needs, and can be reasonably expected to benefit from, an assurance of initial and continuing professional or occupational competence.
 - Whether the practitioners of the profession or occupation exercise independent judgment, and whether the public can reasonably be expected to benefit from the direct regulation of the

¹ The list is modeled after Colorado's sunrise review of new regulation of occupations. [[C.R.S. s. 24-34-104.1](#) (2).]

² This criterion is modeled after the requirement in state law for an economic impact analysis for a proposed rule to provide a comparison with the approach used in neighboring states. [s. 227.137 (3) (a), Stats.]

³ The list is drawn from sunrise and sunset criteria from other states, state administrative rule requirements, and other sources. See, for example, NCSL, [Sunset and Sunrise in Occupational Licensing Policy](#) (April 22, 2022).

⁴ For example, the [application](#) for sunrise review in Colorado requires an applicant to document the physical, emotional, or financial harm to clients resulting from failure to provide appropriate service, or erroneous or incompetent service, within the usual practice of the occupation.

profession or occupation if a practitioner's judgment or practice is limited or subject to the judgment or supervision of others.

- Whether the public can be adequately protected by other means in a more cost-effective manner.
- If regulation is necessary, whether the proposed method establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms.
- Whether the credentialing process impedes applicants with moderate or low incomes.
- The expected impact on market competition, consumer choice, and cost of services, if known.
- Whether the regulation duplicates activities of other entities or the private sector.
- A comparison with the approaches used by Wisconsin's neighboring states, Illinois, Iowa, Michigan, and Minnesota.
- Other factors that may apply, such as whether credentialing is anticipated to improve access to services through increased market options, satisfaction of insurance provider requirements, or recognition under other state or federal regulations.
- Outcome of the review, such as a report on the findings with a recommendation, or a vote with a recommendation, on whether to create the credential as proposed.

SUNSET

Create a specific process for review of existing credentials. Aspects could include the following:

- Initiation of the review process by one of the following methods:
 - Automatically according to a set schedule.
 - As-needed by the Legislature.
- Performance of a review by:
 - An entity in the executive branch, such as DSPS, another agency, or a newly created executive office or commission.
 - An entity in the legislative branch, such as the relevant legislative standing committees, a new, designated joint committee, or the Legislative Audit Bureau.
- Criteria considered in a review, such as the following:⁵
 - Whether regulation is necessary to protect the public health, safety, and welfare.
 - Whether the public needs, and can be reasonably expected to benefit from, an assurance of continuing professional or occupational competence.
 - Whether the practitioners of the profession or occupation exercise independent judgment, and whether the public can reasonably be expected to benefit from the direct regulation of the profession or occupation if a practitioner's judgment or practice is limited or subject to the judgment or supervision of others.

⁵ The list is drawn from sunrise and sunset criteria from other states, state administrative rule requirements, and other sources. See, for example, NCSL, [Sunset and Sunrise in Occupational Licensing Policy](#) (April 22, 2022).

- Whether the public can be adequately protected by other means in a more cost-effective manner.
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms.
- Whether the credentialing process impedes applicants with moderate or low incomes.
- The impact on market competition, consumer choice, and cost of services, if known.
- Whether the regulation duplicates activities of other entities or the private sector.
- A comparison with the approaches used by Wisconsin's neighboring states, Illinois, Iowa, Michigan, and Minnesota.
- Whether the conditions that led to the initial regulation have changed.
- Whether other conditions have arisen that would warrant more, less, or the same degree of regulation.
- Other factors that may apply, such as whether credentialing improves access to services through increased market options, satisfaction of insurance provider requirements, or recognition under other state or federal regulations.
- Outcome of the review, such as a report on the findings with a recommendation, or a vote with a recommendation, on whether to terminate the credential, modify the type of credential, or retain the credential.
- The steps following a review, such as submission of the report to the Legislature for consideration by the relevant standing committees or a new, designated joint committee, or, if the report is issued by a committee, whether the committee must introduce a bill draft based upon its recommendations.

MSK:PW:ksm