RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Board of Licensed Clinical Mental Health Counselors

RULE CITATION: 21 NCAC 53 .0312

RECOMMENDATION DATE: November 24, 2026

RECOMMENDED ACTION:

- [ ] No action
- [ ] Approve, but note staff's comment
- [X] Object, based on:
  - [X] Lack of statutory authority
  - [ ] Unclear or ambiguous
  - [ ] Unnecessary
  - [ ] Failure to comply with the APA
- [ ] Extend the period of review

COMMENT:

Per G.S. 150B-21.9(a)(1), the Rules Review Commission is tasked with determining whether a rule "is within the authority delegated to the agency by the General Assembly."

The proposed rule 21 NCAC 53 .0312, in relevant part, creates a pathway to licensure as a Clinical Mental Health Counselor by virtue of privilege and change of residency under the Professional Counseling Licensure Compact. Specifically, the proposed rule states: "an individual licensed by another member state of the Professional Counseling Licensure Compact, and who holds a privilege to practice in this State, may apply for licensure as a Licensed Clinical Mental Health Counselor by virtue of the privilege if North Carolina has become the individual's home state." The proposed rule also outlines the information requested in the application form.

The Board of Licensed Clinical Mental Health Counselors is relying on its general rulemaking authority found in Article 24 for this rule although this rule is actually in reference to Article 24A. In its November 6, 2026, letter to the RRC, the Board states the following:

> "The Board views Article 24A as a subset of Article 24, as the two are inextricably linked and meant to be read together based on the existing licensure framework. Therefore, under G.S. 90-334, the Board is authorized to make rules related to the Compact. In June of this year, the Commission approved 21 NCAC 53 .0505, which establishes the fees and jurisprudence examination requirements for those seeking the privilege to practice in North Carolina under the Compact. We believe the Commission was correct in its determination that there was statutory authority when it approved that rule."

While the Compact, as adopted in Article 24A, clearly pertains to Clinical Mental Health Counselors, the General Assembly did not give express authority to any entity to create rules implementing the Compact in Article 24A.

GS 150B-19.1(a)(1) states, "an agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest."

The Board has broad authority under Article 24, specifically in GS 90-334(h) which states, "Subject to the provisions of Chapter 150B of the General Statutes, the Board shall have the power to adopt, amend, or repeal rules to carry out the purpose of ***this Article***, including but not limited to the power to adopt ethical and disciplinary standards." However, that authority is clearly and expressly limited to "this Article" meaning Article 24. There does not appear to be anything that extends the Board's authority under Article 24 to create rules pertaining to Article 24A or the compact.

No language in Article 24 was amended when Article 24A was adopted to incorporate or even reference possible authority extending from 24 to 24A. Similarly, Article 24A does not reference Article 24. The Generally Assembly specifically stated in Session Law 2022-52 that Article 24A was a "new" article, not a subsection or relation to Article 24. The only mention of the Board in Article 24A is a final statement in Section 3 which states, "Section 1 of this act becomes effective when at least 10 states have enacted the Professional Counseling Licensure Compact set forth in Section 1 of this act. The North Carolina Board of Licensed Clinical Mental Health Counselors shall report to the Revisor of Statutes when the Professional Counseling Licensure Compact set forth in Section 1 of this act has been enacted by the 10 member states." However, North Carolina was the 16th state to enact the compact, so the act was effective when it was passed. The Board has no other duties or authority granted to it under Article 24A.

In looking at the legislation used to implement the Compact in other nearby states, other states used specific language to grant authority to their respective agencies to administer the Compact in addition to the general language created by the Compact Commission that was provided to every state. Specifically, Arkansas' HB 1181, from 2023, states, "The Arkansas Board of Examiners in Counseling is the Counseling Compact administrator for this state" and "The board may adopt rules that are consistent with the Counseling Compact necessary to implement this subchapter." Georgia's HB 395, from 2022, gave similar powers to the Georgia Composite Board of Professional Counselors, Social Workers, and Marriage and Family. Finally, Tennessee's SB 1027, from 2022, specifically stated, "The board for professional counselors, marital and family

therapists, and clinical pastoral therapists, in consultation with the department of health, may promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to implement this part." The North Carolina General Assembly made no similar express designation of rulemaking authority to any agency with Article 24A in order to implement the Compact.

It is ultimately staff's opinion that the Board lacks authority and staff recommends objection to the final revised version of the rule pursuant to 150B-21.9(a)(1).

Meghan Barney
Rules Review Commission Counsel

APPENDIX A:
§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

(1) It is within the authority delegated to the agency by the General Assembly.

(2) It is clear and unambiguous.

(3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.

(4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

In the event that a proposed temporary or permanent rule fails to comply with any of the standards set forth in this section, the Commission shall object to the temporary or permanent rule.

(a1) Repealed by Session Laws 2023-134, s. 21.2(g), effective October 3, 2023.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9; 2023-134, s. 21.2(g).)

APPENDIX B:
Relevant Authority Statutes

Article 24: Includes GS § 90-329 to GS § 90-345

GS § 90-334. Functions and duties of the Board.
(a) The Board shall administer and enforce the provisions of this Article.
(b) The Board shall elect from its membership, a chairperson, a vice-chairperson, and secretary-treasurer, and adopt rulesto govern its proceedings. A majority of the membership shall constitute a quorum for all Board meetings.
(c) The Board shall examine and pass on the qualifications of all applicants for licenses under this Article, and shall issue a license or renewal of license to each successful applicant
therefor.
(d) The Board may adopt a seal which may be affixed to all licenses issued by the Board.
(e) The Board may authorize expenditures deemed necessary to carry out the provisions of this Article from fees paid to the Board pursuant to this section. No State appropriations shall be subject to the administration of the Board.
(f) The Board shall establish and receive fees not to exceed two hundred dollars ($200.00) for initial or renewal application and not to exceed seventy-five dollars ($75.00) for late renewal, maintain Board accounts of all receipts, and make expenditures from Board receipts for any purpose which is reasonable and necessary for the proper performance of its duties under this Article.
(g) The Board shall have the power to establish or approve study or training courses and to establish reasonable standards for licensure and license renewal, including but not limited to the power to adopt or use examination materials and accreditation standards of any recognized counselor accrediting agency and the power to establish reasonable standards for continuing counselor education.
(h) Subject to the provisions of Chapter 150B of the General Statutes, the Board shall have the power to adopt, amend, or repeal rules to carry out the purposes ***of this Article***, including but not limited to the power to adopt ethical and disciplinary standards.
(i) The Board shall establish the criteria for determining the qualifications constituting "supervised clinical mental health practice".
(j) The Board may examine, approve, issue, deny, revoke, suspend, and renew the licenses of counselor applicants and licensees under this Article, and conduct hearings in connection with these actions.
(k) The Board shall investigate, subpoena individuals and records, and take necessary appropriate action to properly discipline persons licensed under this Article and to enforce this Article.
(l) The Board shall establish a program for licensees who may be experiencing substance use disorders, burnout, compassion fatigue, and other mental health concerns. In establishing this program, the Board is authorized to enter into agreements with existing professional health care programs. The Board is also authorized to refer any licensee to this program as part of the disciplinary process. The Board may adopt rules implementing this program. (1983, c. 755, s. 1; 1987, c. 827, s. 1; 1993, c. 514, s. 1; 2009-367, s. 5; 2019-240, s. 2(a).)

Article 24A : **§ 90-349.1 to § 90-349.15 –Professional Counseling Licensure Compact**

Article 24A refers to the State's participation but does not indicate who within the State will facilitate this.

§ 90-349.3. State participation in the Compact.

(a) To participate in the Compact, a member state must currently do all of the following:

(1) License and regulate licensed professional counselors.

(2) Require licensees to pass a nationally recognized exam approved by the Commission.

(3) Require licensees to have a 60-semester-hour or 90-quarter-hour master's degree in counseling or 60-semester hours or 90-quarter hours of graduate course work, including the following topic areas:

a. Professional counseling orientation and ethical practice.

b. Social and cultural diversity.

c. Human growth and development.

d. Career development.

e. Counseling and helping relationships.

f. Group counseling and group work.

g. Diagnosis and treatment; assessment and testing.

h. Research and program evaluation.

i. Other areas as determined by the Commission.

(4) Require licensees to complete a supervised postgraduate professional experience as defined by the Commission.

(5) Have a mechanism in place for receiving and investigating complaints about licensees.

(b) A member state shall do all of the following:

(1) Participate fully in the Commission's data system, including, but not limited to, using the Commission's unique identifier as defined in rules.

(2) Notify the Commission, in compliance with the terms of the Compact and rules, of any adverse action or the availability of investigative information regarding a licensee.

(3) Implement or utilize procedures for considering the criminal history records of applicants for an initial privilege to practice. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records. The procedures must comply with the following:

a. The member state must fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the Federal Bureau of Investigation record search and shall use the results in making licensure decisions.

b. Communication between a member state, the Commission, and among member states regarding the verification of eligibility for licensure through the Compact shall not include any information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a member

state under P.L. 92-544.

(4) Comply with the rules of the Commission.

(5) Require an applicant to obtain or retain a license in the home state and meet the home state's qualifications for licensure or renewal of licensure, as well as all other applicable state laws.

(6) Grant the privilege to practice to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the Compact and rules.

(7) Provide for the attendance of the state's commissioner to the Counseling Compact Commission meetings.

(c) Member states may charge a fee for granting a privilege to practice.

(d) Individuals not residing in a member state shall continue to be able to apply for a member state's single-state license as provided under the laws of each member state. However, the single-state license granted to these individuals shall not be recognized as granting the privilege to practice professional counseling in any other member state.

(e) Nothing in this Compact shall affect the requirements established by a member state for the issuance of a single-state license.

(f) A license issued to a licensed professional counselor by a home state to a resident in that state shall be recognized by each member state as authorizing a licensed professional counselor to practice professional counseling, under a privilege to practice, in each member state.

(2022-52, s. 1.)

§ 90-349.15. Binding effect of Compact and other laws.

SECTION 3. Section 1 of this act becomes effective when at least 10 states have enacted the Professional Counseling Licensure Compact set forth in Section 1 of this act. The North Carolina Board of Licensed Clinical Mental Health Counselors shall report to the Revisor of Statutes when the Professional Counseling Licensure Compact set forth in Section 1 of this act has been enacted by the 10 member states. Section 2 of this act becomes effective July 15, 2022. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of July, 2022.

21 NCAC 53 .0312 is adopted with changes as published in 40:20 NCR 1621-22 as follows:

21 NCAC 53 .0312 LICENSURE BY VIRTUE OF PRIVILEGE AND CHANGE OF RESIDENCY UNDER PROFESSIONAL COUNSELING LICENSURE COMPACT

(a) The terminology used in this Rule conforms to the definitions set forth in G.S. 90-349.2. In accordance with G.S. 90-349.15, Rules .0205, .0206, and .0304 of this Chapter shall not apply to applicants under this Rule. Pursuant to G.S. 90-349.5, ~~and notwithstanding the requirements of Rules .0205, .0206, and .0304 of this Chapter,~~ an individual licensed by another member state of the Professional Counseling Licensure Compact, and who holds ~~an active~~ a privilege to practice in this State, may apply for licensure as a Licensed Clinical Mental Health Counselor by virtue of the privilege if North Carolina has become the individual's ~~primary residence.~~ home state. The privilege holder seeking licensure based on change of ~~primary residency~~ home state shall submit an application on the form furnished by the Board at www.ncblcmhc.org. The ~~following~~ application form shall contain the following information and documentation: ~~documentation must be provided with the application form:~~

(1) ~~Complete~~ Full legal name;

(2) Date of birth;

(3) Social Security Number;

(4) National Practitioner Identifier;

(5) Any other name by which the applicant was known in the past, accompanied by a certified copy of a court order of name change, if applicable;

(6) Home phone number;

(7) Work phone number;

(8) Cell phone number;

(9) Email address;

(10) Primary residential address, dates of residency at that address, and any other primary residential addresses in the 12 consecutive months prior to submitting the application;

(11) Proof of applicant's primary residency in North Carolina, including any of the following documentation for the applicant:

(A) ____filed North Carolina state income tax return for the most recent year;

(B) ____deed demonstrating ownership of property in North Carolina where the applicant resides;

(C)_____unexpired North Carolina driver's license;

(D)_____ active registration to vote in North Carolina; or

(E) ____active registration in North Carolina of a vehicle owned by applicant;

(12) Identification of current home state, home state license number, current license status, any prior disciplinary or administrative action, and expiration date of home state license;

(13) North Carolina privilege number;

(14) A statement regarding any existing or prior encumbrance or restriction on any state-issued license or privilege and the dates of such encumbrance or restriction;

(15) A statement regarding any adverse action, including disciplinary action, taken against the applicant's license or privilege in any state;

(16) The applicant's Professional Disclosure Statement meeting the requirements of Rule .0204 of this Chapter;

(17) A completed ~~fingerprint record card~~ and signed North Carolina State Bureau of Investigation electronic fingerprint submission release of information form authorizing the Board to request and receive a fingerprint-based criminal history record check from the Federal Bureau of Investigation and the North Carolina State Bureau of ~~Investigation;~~ ~~and~~ Investigation. The form is available through the application portal on the Board's website at https://portal.ncblcmhc.org/; and

(18) Documentation of successful completion of the jurisprudence exam published on the Board's website, completed within six months prior to seeking licensure.

(b) Pursuant to G.S. 90-349.5(b), the applicant for licensure ~~must~~ shall pay the application fee set forth in Rule .0501 of this Chapter.

(c) Once a privilege is converted to a home state license, applicant shall notify their former home state that North Carolina is their new home state under the Compact.

History Note: *Authority G.S. 90-334; 90-349.3; 90-349.4; 90-349.5; 90-349.15;*
Eff. October 1, 2026.