

# Chapter 1 Rule on Rulemaking

**Effective Date:** November 25, 2022

**1.0 Purpose:** Pursuant to **Section 11**, the Counseling Compact Commission shall promulgate reasonable and lawful uniform rules to facilitate and coordinate implementation and administration of the Counseling Compact. This Rule will become effective upon passage by the Counseling Compact Commission as provided in Section 11 of the Counseling Compact.

- 1.1 Definition(s):**
- (a) **“Commission”** means: the Counseling Compact Commission, which is the national administrative body whose membership consists of all states that have enacted the Compact.
  - (b) **“Compact”** means: Counseling Compact.
  - (c) **“Delegate”** means: the appointed delegate from each state as described in Section 9 of the Compact and further rules promulgated by the Commission pursuant to the criteria set forth in Section 11.
  - (d) **“Member state”** means a state, the District of Columbia, or United States territory that has enacted this Compact legislation and which has not withdrawn pursuant to Section 13 or has not been discharged pursuant to Section 12 due to non-compliance with the provisions of Section 3.
  - (e) **“Rule”** means: a regulation, principle or directive promulgated by the Commission pursuant to the criteria set forth in Section 11 that has the force and effect of statutory law in a Member state and includes the amendment, repeal, or suspension of an existing Rule.
  - (f) **“Rules Committee”** means: a committee that is established as a standing committee to develop reasonable and lawful uniform rules for consideration by the Commission and subsequent implementation by the states and to review existing rules and recommend necessary changes to the Commission for consideration.
  - (g) **“Scope of Practice”** means: the procedures, actions, and processes a Licensed Professional Counselor is permitted to undertake in that state and the circumstances under which the Licensed Professional Counselor is permitted to undertake those procedures, actions and processes. Such procedures, actions and processes and the circumstances under which they may be undertaken may be established through official means, including, but not limited to, statute, rules and regulations, case law, and other processes available to the State Regulatory Authority or other government

agency.

(h) **“State”** means: any state, commonwealth, district, or territory of the United States of America that regulates the practice of Professional Counseling.

**1.2 Proposed rules or amendments:** rules shall be adopted by majority vote of the Member States of the Commission pursuant to the criteria set forth in Section 11 and in the following manner:

(a) New rules and amendments to existing rules proposed pursuant to Section 9 and Section 11 and the Commission Bylaws shall be submitted to the Commission office for referral to the Rules Committee in any of the following ways:

(1) Any Delegate may submit a proposed Rule or rule amendment for referral to the Rules Committee during the next scheduled Commission meeting.

(2) Standing Committees of the Commission may propose rules or rule amendments by majority vote of that Committee.

(3) The Commission or an authorized committee of the Commission may direct revisions to a previously adopted Rule or amendment 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 in writing and delivered to the Chair of 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 may not take effect without the approval of the Commission.

**1.3 The Rules Committee:** shall prepare a draft of all proposed rules and provide the draft to the Executive Committee to provide to all Delegates for review and comments. Based on the comments made by the Delegates, the Rules Committee shall prepare a final draft of the proposed rule(s) or amendments for consideration by the Commission not later than 30 days prior to the next Commission meeting.

**1.4 Prior to promulgation and adoption of a final Rule:** In accordance with Section 11 of the Compact, the Commission shall publish the text of the proposed rule or amendment prepared by the Rules Committee not later than 30 days prior to the meeting at which the vote is scheduled, on the official website of the Commission and on the website of each Member state licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules. All written comments received by the Rules Committee on proposed rules shall be made available to the public upon request. In addition to the text of the proposed Rule or amendment, the reason for the proposed rule shall be provided.

### **1.5 The Notice of Proposed Rulemaking shall include:**

- (a) The proposed time, date and location of the meeting in which the Rule shall be considered and voted upon,
- (b) The text of the proposed Rule or amendment and the reason for the proposed Rule.
- (c) A request for comments on the proposed Rule from any interested person; and
- (d) The manner in which interested persons may submit notice to the Commission of their intention to attend the public meeting and any written comments.

**1.6 Public Hearings:** The Commission shall grant an opportunity for a public hearing before it adopts a Rule or amendment if a hearing is requested by:

1. At least twenty-five (25) persons;
2. A state or federal governmental subdivision or agency; or
3. An association having at least twenty-five (25) members.

If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed Rule without a public hearing. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is 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 notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five (5) business days before the scheduled date of 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 shall be made available on request.
4. Nothing in this section shall be construed as requiring a separate hearing on each Rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

**1.7 Final adoption of Rule:** The Commission shall, by majority vote of all Member States, take final action on the proposed Rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

1. If a majority of the legislatures of the Member States rejects a Rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within 4 years of the date of adoption of the Rule, the Rule shall have no further force and effect in any Member state.
2. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

**1.8 Status of Rules upon adoption of Compact additional Member states and applicability:**

Any state that joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the 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 the Compact becomes law in that state.

No Member State's rulemaking requirements shall apply under this Compact.

The Rules of the Commission shall have the force of law in each Member State, provided however that where the Rules of the Commission conflict with the laws of the Member State that establish the Member State's Scope of Practice 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.

**1.9 Emergency Rulemaking:** Upon determination that an emergency exists, the Commission may consider and adopt an emergency Rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the 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 that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare,
2. Prevent a loss of Commission or Member state funds; or
3. Meet a deadline for the promulgation of an administrative Rule that is established by federal law or rule.

**1.10 Non-substantive Rule Revisions:** The Commission or an authorized committee of the Commission may direct revisions to a previously adopted Rule or amendment 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 in writing 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 may not take effect without the approval of the Commission.