



Recognition of EMS Personnel
Licensure Interstate CompAct

REPLICA

MYTHS AND FACTS – Version 2.0 dated 03/17/2017

MYTH:

REPLICA is a threat to EMS jobs and wages.

FACT:

There is **no** evidence that interstate compacts reduce wages despite the longstanding existence of interstate compacts in other professions.

MYTH:

REPLICA compromises the quality care of patient care and services to the communities.

FACTS:

REPLICA brings an umbrella over quality that has not previously existed between states including:

- REPLICA requires all EMTs –Paramedics working across state lines to be Nationally Registered, which means they have all passed a common ‘fitness test’ examination for EMS licensure,
- EMS personnel must maintain education and performance in their Home State.
- REPLICA requires all EMS personnel exercising the ‘privilege to practice’ in a remote state to function within a defined scope of practice and with the supervision of a physician medical director.
- REPLICA increases safety for patients and EMS coworkers by ensuring EMTs undergo FBI biometric background checks.
- REPLICA reduces the potential for medical errors by authorizing EMS personnel to work under their “Home State” scope of practice or protocols (if applicable). For the first time, state EMS officials in REPLICA member states’ will be able to share and obtain

licensure history of personnel across state lines through a nationally coordinated database.

MYTH:

By allowing EMS providers from other states to transport patients there is the possibility that Medicaid money will be leaving your state to benefit other states.

FACT:

REPLICA does not apply to agencies; it only applies to individual personnel. REPLICA does not change how ambulance services bill for services or receive payments. REPLICA does not change ambulance service regulations or existing patient destination guidelines.

MYTH:

Members of the REPLICA Interstate Commission are not elected officials, and therefore they are not accountable to the public.

FACT:

State EMS officials are not elected. They are public officials and who are usually members of the executive branch of state government. As government officials, state EMS officials are **PUBLIC** officials who answer and are accountable to the public. REPLICA clarifies that, "...the responsible official of the state EMS authority or his designee shall be the delegate to this compact for each member state." Therefore, the Compact Delegate is a public official and accountable to both their Home State executive branch leadership and to the general public.

State EMS officials are regularly involved in rulemaking processes in their states and working with members of boards and commissions that are also appointed, not elected.

MYTH:

REPLICA does not address Worker Safety or Radio Interoperability.

FACT:

These issues are outside the scope of REPLICA and are addressed in a variety of other federal, state, and local pieces of legislation.

MYTH:

Members of the REPLICA Interstate Commission are granted more immunity through the compact.

FACT:

Members of the commission carry the same level of qualified immunity that applies to their state job. REPLICA legislation clarifies this immunity in their role as a compact delegate, but it does not expand the immunity.

The **qualified immunity** doctrine protects government officials from liability for civil damages "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."

MYTH:

REPLICA in its current form makes government bigger and more bureaucratic.

FACT:

Interstate compacts have long been recognized as a way to reduce, not increase, the burdens of government regulations while upholding common standards and public protections. Member states share in the responsibilities of managing cross border activities instead of each state individually addressing the same issue in a different manner. Interstate Compacts address issues of concern between member states instead of inviting the federal government to intervene.

MYTH:

REPLICA would allow private entities or rival organizations to position resources near state borders to compete or access multiple communities.

FACT:

REPLICA provides a mechanism for qualified EMS personnel to cross state borders in allowable circumstances. REPLICA does not change or expand a EMS Service or Agency's legal ability to provide cross-boarder services. The REPLICA legislation strictly prohibits the Compact Commission from writing rules and/or interfering with EMS agency/entity licensure. EMS agencies/entities are required to follow the licensure requirements for the state(s) in which they operate.

MYTH:

When REPLICA goes into effect state money must be contributed to support the commission.

FACT:

In the REPLICA model legislation, Section 10, Establishment of an Interstate Compact for EMS Personal Practice, Item F: "Financing the Commission", states "the commission may levy on and collect an annual assessment from each member state". However, the compact language does not require the Commission to impose a levy or fee.

Member States should plan reasonable funds for their delegate to attend two meeting annually at a location in the United States to be determined by the commission.

Any future fiscal levy would first need to be approved by the REPLICA Commission

MYTH:

Department of Homeland Security (DHS) intent in funding this project was not for routine movement, but rather for unscheduled or emergency movement in relation to law enforcement and/or homeland security.

FACT:

DHS was aware that providing a means of immediate legal recognition of personnel extended far beyond the boundaries of their own agency and funded this initiative as a means of providing a solution for all rational scenarios for the entire EMS industry.

MYTH:

The language in the bill states it is “Intended to facilitate day-to-day movement.” Therefore, the enabling legislation should be isolated to day-to-day response to emergencies, as requested by, or in support of, federal, state, and local authority.

FACT:

EMS licenses are issued to EMS Personnel regardless of what type of responses they perform while on the job. It is no less important to assure that the EMS personnel are accessible, operating with a legally sound and formally executed means of recognition regardless of emergency versus non-emergency.

The National Advisory Panel (NAP) and Drafting Team acknowledged there was another condition, i.e., “in anticipation of an emergency”. Sentiments were unanimous that when EMS personnel are requested to cross a state border they shouldn’t have to stop and classify the incident to know whether they would be legal or not.

MYTH:

There is no definition of an “appropriate authority”

FACT:

The REPLICA legislation addresses this in the opening paragraph of Section V., line 130, notes that “an appropriate authority” is followed by the phrase “as defined in the rules of the Commission”. Since the list of possible authorities is already anticipated to be long and varied (from state EMS offices, to local Incident Commanders), this level of detail and the ongoing changes that are likely to need to be made is more properly contained in rule.

MYTH: The Commission over time may likely be able to pass rules and impact state rights.

FACT: The Commission can write a rules only related to the Compact operations and does so through a public process, including public comment, and hearings. The REPLICA legislation (Section 10.,lines 400 - 472) is specific to rulemaking and shares the same standards as state-by-state rulemaking. States preserve their sovereignty in a compact and gain rights, not lose them. The Commission will be composed of “The responsible official of the state EMS authority or his designee shall be the delegate to this Compact for each member state”.(Section 10, line 215)

MYTH:

EMS Personnel have to hold National Registry certification to participate in the Compact.

FACT:

The Compact requires a National Registry of Emergency Medical Technicians (NREMT) exam for *initial* licensure only. Recertification requirements are determined by each state and are honored by each state through the extension of a privilege to practice. This includes EMT, AEMT and Paramedic.

MYTH:

REPLICA states that it will, "Enhance the states' ability to protect the public's health and safety, especially patient safety." However, it proposes no control over quality of providers, service or agency, and no measures that a providing agency is licensed or regulated in a remote state.

FACT:

REPLICA provides access to a Coordinated Database which includes licensure history on EMS Personnel from member states. This Database also includes checks with the FBI and the National Provider Data Bank (NPDP) that simply have not been available in the past. For the first time, states will know exactly who is practicing in their state, providing an unprecedented level of accountability. Additionally, member state EMS Personnel are required to have medical direction in their home states. This brings about more quality controls than currently exist and can be sustained. Lastly, the final line of the Compact, states this in the in the last sentence of the legislation. Every state retains authority to require organizations to obtain a license in order to function in their state, "Nothing in this Compact supersedes state law or rules related to licensure of EMS agencies." (Section 15, line 559)

MYTH:

The Commission is a "body politic." A group of people that is politically organized under a single government authority. What is the single government authority for this agency to be organized under?

FACT:

Interstate compacts are empowered under the United States Constitution (Article 1, Section 10, Clause 3). The Compact Commission is the government authority which is informed by the collective authority of the states and is charged with promulgation of rules. Upon activation, REPLICA will join over 200 other governmental Commissions/Administrations of interstate compacts already in place, organized and providing the same government authority to their compact. The Commission will be composed of one representative from each member state's entity responsible for EMS, with one vote. It is not a diverse group of EMS and Public safety stakeholders.

MYTH:

The Commission can pass rules and regulations that impact states, but is not required to provide for public comment unless requested. However, it will use public funds to operate.

FACT:

The Commission is comprised of a representative from each of the member states. It will accommodate public comment as outlined in the Compact. This is similar to many states' rulemaking process where a draft rule is published and a hearing occurs if a request for same is made by a third party. REPLICA Section 12, *Rulemaking*, outlines in details the public process utilized for writing, reviewing, and adopting rules. The use of public funds is commonplace among the existing interstate compact commissions in the US, and may include state funds if necessary, or federal funds as in those appropriated today for the Emergency Management Assistance Compact Administration. It is also possible that the Commission will function without dependency on public funds.

MYTH:

By instituting an immunity clause for unelected officials there will be no quality controls or manner in which commissioners can be held accountable.

FACT:

Commissioners will be state employees who likely already enjoy immunity due to their governmental employment. As such, they will be held accountable for acceptable performance by their employer.

