



REPLICA

Questions and Answers

updated 4/13/2018

To keep interested stakeholders informed, the members of REPLICA's Interstate Commission for EMS Personnel Practice are pleased to provide the following answers to questions that we have received since the EMS Compact was considered. We will update this document as other questions are asked about the Compact and the Commission. Please return to this website occasionally as this document will be updated at <http://www.emsreplica.org/tool-kit/>.

Thank You for your ongoing Support!

A handwritten signature in black ink, which appears to read "Joseph W. Schmider".

Joseph W. Schmider
Chairman, Interstate Commission for EMS
Personnel Practice

Question: Can I cross state lines today (April 2018) on a privilege to practice under the REPLCA?

Answer: No. At this point, REPLICA is NOT active for licensed EMS personnel to cross state lines under the authority of the Compact to provide medical care. The Commission must adopt rules related to the functions of the Compact in order for the Compact to become fully operational.

The Interstate Commission for EMS Personnel Practice has officially assembled, adopted bylaws and Chapter One: Rule on Rulemaking. An Executive Committee and Rules Committee have been established. The Commission members are actively working on developing the rules and policies necessary to make the Compact operational.

Notices for Commission meetings, proposed rulemaking and all related activities are available through REPLICA states as well as at <http://www.emsreplica.org/commission/>.

Question: Does REPLICA only benefit large private entities and the federal government?

Answer: REPLICA provides a privilege to practice in authorized circumstances to all EMS personnel in member states. It is not limited to one type of service model or built to benefit one type of EMS provider and their personnel over another. The Compact language was drafted by representatives from air and ground, career and volunteer, private for-profit and non-profit EMS representatives, fire based, state EMS Officials and federal partners. Specifically, the following organizations had seats on the Compact's Drafting Team and these representatives worked to build REPLICA.

- The National Association of State EMS Officials
- Council of State Governments
- Association of Air Medical Services
- International Association of Flight and Critical Care Paramedics
- International Association of Firefighters
- National Association of EMS Managers
- National Association of EMT's
- Vedder Price Law Firm

Question: Was it the Department of Homeland Security's (DHS) intent for this project to enable unscheduled or emergency movement in relation to law enforcement and/or homeland security and not include routine movement?

Answer: 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.

Question: The language in the bill states it is "Intended to facilitate day-to-day movement." Therefore, shouldn't the enabling legislation be isolated to day-to-day response to emergencies, as requested by, or in support of, federal, state, and local authority?

Answer: Emergency Medical Services (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 nature of the request for assistance.

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 it they would be legal or not.

Question: Have State EMS offices budgeted for REPLICA?

Answer: Currently, there **are no fees for REPLICA**. The Compact allows for the levy of a fee when it is determined that a fee is necessary. In December 2017, the National Registry of Emergency Medical Technicians (NREMT) submitted two proposals to the Commission, one to support the Coordinated Database and one to provide administrative support to the Commission. The support from the NREMT, a not-for-profit corporation, has been significant in that it has alleviated any immediate need for funding through, a levy. In the first year of the Compact, associated costs have been those related to participation in the Commission. The Commission has conducted much of its regular business via conference call or through online meetings. The Commission has successfully scheduled those few meetings requiring travel in conjunction with other events to achieve economy of scale for participating states.

A “Funding Assistance Guide” was published by the National Association of State EMS Officials (NASEMSO) in 2016. This guide lists the various funding resources supporting state EMS offices budgets including in-state revenue streams. According to this guide EMS personnel licensure fees comprise 5% or less of their annual EMS office budgets.

Question: Can the Commission pass rules and regulations that impact states without providing for public comment unless requested even though it will use public funds to operate?

Answer: No. REPLICA Section 12 “*Rulemaking*”, outlines in detail the public process utilized for public comment in writing, reviewing, and adopting rules. This section also outlines how a public hearing can be easily requested. The Commission is comprised of one voting representative from each of the member states who will participate in deliberations, decisions and rulemaking. Similar to many states’ current rulemaking processes, the Commission Rules Committee will draft and publish any proposed rule language for public comment.

Question: Could REPLICA compromise the quality of patient care and services to the communities in member states?

Answer: There is no evidence to support that REPLICA would compromise the quality of care for patients. REPLICA brings an umbrella over quality that has not previously existed between some states including:

- REPLICA requires all Emergency Medical Technicians, (EMTs), Advanced EMTs (AEMT) and Paramedics working across state lines to have passed a common, standardized, and educationally sound 'fitness test' for EMS licensure and to meet the current educational and performance standards in their home state.
- REPLICA requires all EMS personnel exercising the 'privilege to practice' in a remote state to function under a defined scope of practice and under the supervision of a physician medical director.
- REPLICA increases safety for patients and EMS coworkers by ensuring that member states utilize Federal Bureau of Investigation (FBI) compliant background checks with biometric data*.
- REPLICA reduces the potential for medical errors by authorizing EMS personnel to work under their home state scope of practice.
- REPLICA member states' EMS licensing authority will have access to a national, EMS personnel Coordinated Database. State EMS Officials will have the ability to rapidly share licensure history of personnel for the first time in our profession.

Furthermore, under Section 8. "*Adverse Actions*," if an individual's license in any home state is restricted or suspended, the individual shall not be eligible to practice in a remote state under the privilege to practice until the individual's home state license is restored. This is based on home state laws and rules understanding that there are differences between states, including in the area of what constitutes a felony and, or a misdemeanor. Any member state may take adverse action against an individual's privilege to practice in that state based on the factual findings of another member state, so long as each state follows its own procedures for imposing such adverse action.

* No later than five years after activation of the Compact, requires a criminal background check of all applicants for initial licensure, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation with the exception of federal employees who have suitability determination in accordance with US CFR §731.202 and submit documentation of such as promulgated in the rules of the Commission; (See Section 3, C., 4. of the Compact.)

Question: Does the Compact exempt EMS agencies or their ambulances from having to be licensed in a remote state?

Answer: The issue that exists *today* with EMS crossing state borders is a twofold problem: the personnel must be licensed and the agency or vehicle must be licensed. The Compact is designed to help resolve one of the two issues; the licensing of personnel. The Compact **expects** that EMS agencies and their vehicles will be properly licensed in states where they are crossing state lines. Specifically, Section 15. "*Construction and Severability*" of the Compact states "Nothing in this compact

supersedes state law or rules related to licensure of EMS agencies.” That very last sentence in the Compact assures each state’s authority to hold ambulance services accountable to the agency licensure process, state by state, as they do today.

Additionally, it is important to remember that EMS personnel are often requested to cross state lines in circumstances in which they function *without* an ambulance, for example, wildland fire response teams, search and rescue efforts, or special events.

Question: Could REPLICA be a threat to EMS jobs and wages?

Answer: There is no evidence that interstate compacts reduce wages despite the long-standing existence of interstate compacts in other professions such as nurses, physicians and physical therapists.

Question: Does REPLICA allow for and/or encourage EMS personnel to self-deploy to disaster events?

No. Under Section 5. “*Conditions of Practice in a Remote State*” the Compact expressly states “An individual may practice in a remote state under a privilege to practice only in the performance of the individual’s EMS duties as assigned by an appropriate authority.” EMS Personnel need to function within the Compact’s authority in order to be covered by the protections it offers. EMS state offices will now have a way to hold EMS personnel accountable in these situation as well as to know who is practicing within their state and that they meet the member states standards.

Question: Do EMS personnel have to hold National Registry certification to participate in the Compact?

Answer: No. For states to be eligible to join the Compact, they must use the NREMT for ***initial*** licensure at the EMT and Paramedic levels. Only requirements for initial licensure are within the authority of the Compact. The Compact ***does not*** require that an individual maintain certification through the NREMT. EMS personnel eligibility includes being 18 years of age, and licensure in your home state as an EMT, AEMT or Paramedic. That license must be in good standing, and EMS personnel must be working under the supervision of a Medical Director. States retain their authority to determine requirements for licensure or certification renewal which may or may not include maintaining certification through the NREMT.

Question: As members of the Interstate Commission for EMS Personnel Practice are not elected officials does this lessen their accountability to the public?

Answer: Commissioners are public officials and are generally members of the executive branch of state government. As the Commission is a public body, Commissioners 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, EMS community and the general public.

Question: Is it possible that REPLICA does not address worker safety or radio interoperability?

Answer: These issues are outside the scope of REPLICA and are best addressed in a variety of other federal, state, and local pieces of legislation. It is the goal of the Commission to ensure a safe workforce, no matter on where they are providing EMS.

Question: Are members of the Interstate Commission for EMS Personnel Practice granted more immunity through the Compact?

Answer: No. Members of the Commission have the same level of immunity that applies in their state position. REPLICA legislation extends this immunity to their role as a Compact delegate but 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."

Question: Does REPLICA in its current form make government bigger and more bureaucratic?

Answer: Interstate Compacts have long been seen as a way to lessen, not increase, the burdens of government regulations while upholding common standards and public protections. Compact 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 to the federal government between its member states instead of inviting the federal government to intervene.

Question: Will REPLICA allow private entities or rival organizations to position resources near state borders to compete or access multiple communities?

Answer: REPLICA provides a mechanism for qualified EMS *personnel* to cross state borders in authorized circumstances. States retain their existing authority to determine when REPLICA is applicable, and when an individual is required to be licensed within a state. The REPLICA legislation prohibits the Interstate Commission

for EMS Personnel Practice from writing rules or interfering with EMS agency licensure. Ambulance services are expected to be licensed in states that they transport patients to and/or from, and EMS agencies are required to follow the licensure requirements for the state(s) in which they operate.

Question: There is no definition of an “appropriate authority”?

Answer: The REPLICA legislation addresses this in the opening paragraph of Section 5. “*Conditions of Practice in a Remote State*”, (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 anticipated to be long and varied (from state EMS offices to local Incident Commanders), this level of detail and the ongoing changes that will be required is more properly contained in the rulemaking process by representatives from member states.

Question: Could the Commission over time be able to pass rules and impact state rights?

Answer: No, the Commission can write rules only related to the Compact operations and does so through a public process, including public comment, and the availability of public hearings.

Question: REPLICA states that it will “enhance the states’ ability to protect the public’s health and safety, especially patient safety. Are there controls over the quality of providers, service or agency, and measures that a providing agency is licensed or regulated in a remote state?”

Answer: Yes, REPLICA brings member states under an umbrella of accountability and quality controls not previously seen in our profession. These include the sharing of a common standard for testing and an FBI compliant background check at the time of initial licensure, access to a Coordinated Database which includes licensure history on personnel from member states, requiring that personnel have medical direction in their home states and allowing for the utilization of home state protocols

Question: A 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?

Answer: Interstate compacts are empowered under the United States Constitution (Article 1, Section 10, Clause 3). A compact commission is the government authority which is informed by the collective authority of the member states and is charged with promulgation of rules. Upon activation, REPLICA will join over 200 other governmental commissions or administrations of interstate compacts already in place, organized and provided the same authority to their compact. The Interstate

Commission for EMS Personnel Practice will be comprised of one representative from each member state's authority responsible for EMS, with one vote.

Question: By instituting an immunity clause for unelected officials is there a way to insure quality controls or the manner in which commissioners can be held accountable?

Answer: Commissioners will be state employees who already have immunity due to their governmental employment. As such, they are and will be held accountable for their work on the Commission by the state leadership that appointed them to the Commission.

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