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BILL ANALYSIS



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House Bill 5533 (Substitute H-1 as passed by the House)
Sponsor: Representative Edward J. Canfield, D.O.
House Committee: Health Policy
Senate Committee: Health Policy

Date Completed: 12-6-16

CONTENT

The bill would amend the Public Health Code to delete provisions authorizing a physician's assistant (P.A.) to practice under the supervision of a delegating physician or podiatrist, and instead allow a P.A. to practice without supervision by entering into a practice agreement with a physician or a podiatrist. Specifically, the bill would do the following:

- Revise the definition of "practice as a physician's assistant" to refer to practice under an agreement with a participating physician or podiatrist, rather than practice under the supervision of a physician or podiatrist.
- Prohibit a P.A. from engaging in the practice as a P.A. except under the terms of a practice agreement that met the requirements prescribed in the bill.
- Refer to physicians or podiatrists who were parties to a practice agreement with a P.A., rather than physicians or podiatrists supervising a P.A.
- Eliminate a requirement that a P.A. provide medical care services only under the supervision of a physician.
- Authorize the Board of Medicine, the Board of Osteopathic Medicine and Surgery, and the Board of Podiatric Medicine and Surgery, as applicable, to prohibit or otherwise restrict medical care services within a practice agreement, under certain circumstances.
- Delete a provision prohibiting a physician from delegating ultimate responsibility for the quality of medical care services.
- Delete references to the delegation of drug prescription by a physician to a P.A., and authorize the Department of Licensing and Regulatory Affairs (LARA) to promulgate rules regarding the prescription of drugs by a P.A.
- Eliminate a waiver applicable to a P.A. from a requirement to obtain a license from the Michigan Board of Pharmacy to prescribe or dispense a controlled substance.
- Allow the applicable board to prohibit a physician, podiatrist, or P.A. from entering into a practice agreement for any of the grounds for disciplinary action under the Code.
- Include failure to practice in accordance with the terms of a practice agreement among the Code's grounds for disciplinary action against a licensee, and prescribe sanctions.
- Include a licensed P.A. in the definition of "prescriber" for the purposes of pharmacy practice and drug control, and delete references to a P.A. practicing under the supervision of a dispensing prescriber.
- Allow a health facility or agency to designate one or more physicians to enter into a practice agreement with a P.A.

- **Refer to a P.A. with whom a physician had a practice agreement, rather than a P.A. to whom a physician has delegated the performance of medical care services, in provisions prescribing the contents of a policy a health facility or agency must adopt describing the rights and responsibilities of patients or residents.**
- **Revise the duties of the joint task for licensed health profession subfields, and transfer the duties to LARA.**

The bill would take effect 90 days after enactment.

Practice as a P.A.

The bill would amend provisions of Parts 170 (Medicine), 175 (Osteopathic Medicine and Surgery), and 180 (Podiatric Medicine and Surgery) of the Code as described below.

Currently, "practice as a physician's assistant" means the practice of medicine, osteopathic medicine and surgery, or podiatric medicine and surgery under the supervision of a licensed physician or podiatrist. The bill would refer to the practice of medicine, osteopathic medicine and surgery, or podiatric medicine and surgery with a participating physician or podiatrist, as applicable, under a practice agreement. "Participating physician" and "participating podiatrist", respectively, would mean a physician or podiatrist, or a physician or podiatrist designated by a group of physicians or podiatrists to represent that group. "Participating physician" also would include a physician designated by a health facility or agency to represent that facility or agency.

The bill would prohibit a P.A. from engaging in the practice as a P.A. except under the terms of a practice agreement that met the bill's requirements. A practice agreement would have to include all of the following:

- A process between the P.A. and the participating physician or podiatrist for communication, availability, and decision-making when providing medical treatment to a patient.
- A protocol for designating an alternative physician or podiatrist for consultation in situations in which the participating physician or podiatrist was not available for consultation.
- The signature of the P.A. and the participating physician or podiatrist.
- A termination provision that allowed the P.A. or participating physician or podiatrist to terminate the agreement by providing written notice at least 30 days in advance.
- The duties and responsibilities of the P.A. and the participating physician or podiatrist.
- A requirement that the participating physician or podiatrist verify the P.A.'s credentials.

The bill would delete provisions referring to the maximum number of P.A.s whom a physician or podiatrist may supervise. Instead, the number of P.A.s in a practice agreement with a participating physician or podiatrist and the number of individuals to whom a physician has delegated the authority to perform acts, tasks, or functions would be subject to the terms of the practice agreement.

Parts 170 and 175 authorize the Board of Medicine and the Board of Osteopathic Medicine and Surgery, respectively, and Part 180 authorizes LARA, to prohibit or otherwise restrict the delegation to a P.A. of a medical care service, or to require higher levels of supervision, to the extent that a particular service requires extensive medical training, education, or ability or poses serious risks to the health and safety of patients. Under the bill, this would apply except for a medical care service within a practice agreement. To the extent that a particular service required extensive training, education, or ability or posed serious risks to the health or safety of patients, the applicable board could prohibit or otherwise restrict that service within a practice agreement.

The bill would delete a provision prohibiting a physician from delegating ultimate responsibility for the quality of medical care services, even if they are provided by a P.A.

Parts 170 and 175 allow the Board of Medicine and the Board of Osteopathic Medicine and Surgery to promulgate rules for the delegation by a supervising physician to a P.A. of the function of prescription of drugs. The rules may define the drugs or classes of drugs for which prescription may not be delegated, as well as other procedures and protocols necessary to promote consistency with Federal and State drug control and enforcement laws. The bill would delete references to the delegation of drug prescription, and instead refer to the prescribing of drugs by a P.A. Also, the bill would allow LARA to promulgate these rules in consultation with the Boards, and would add similar language regarding the rules to Part 180.

The bill would delete a provision allowing a supervising physician to delegate to a P.A. the performance of medical care services for a patient who is under the physician's case management responsibility, if the delegation is consistent with the P.A.'s training. The bill also would delete several related provisions.

The Code provides that a physician or podiatrist is not required to countersign orders written in a patient's clinical record by a P.A. to whom the physician or podiatrist has delegated the performance of medical care services for a patient, and is not required to sign an official form that lists the physician's signature as the required signatory if that form is signed by a P.A. to whom the physician or podiatrist has delegated the performance of medical care services. The bill would refer to a P.A. with whom a physician or podiatrist has a practice agreement, rather than a P.A. to whom the physician or podiatrist has delegated medical care services.

Currently, the Board of Medicine, Board of Osteopathic Medicine and Surgery, and Board of Podiatric Medicine and Surgery may prohibit a physician or podiatrist from supervising P.A.s for any of the prescribed grounds for disciplinary action, or for failure to supervise a P.A. in accordance with the Code. Under the bill, instead, the applicable board could prohibit a physician, podiatrist, or P.A. from entering into a practice agreement for any of the prescribed grounds for disciplinary action.

Part 170 requires the joint task force for licensed health profession subfields to do all of the following:

- Promulgate rules necessary for the implementation of its powers and duties and perform the acts and make the determinations necessary for their proper implementation.
- Promulgate rules to establish the requirements for the education, training, or experience of P.A.s for licensure in Michigan.
- Develop and make public guidelines on the appropriate delegation of functions to and supervision of P.A.s according to their level of education, training, or experience.
- Direct LARA to grant licenses to applicants who meet the requirements for practice and use of the title of P.A.
- Promulgate rules to establish criteria for the evaluation of programs for the education and training of P.A.s for the purpose of determining whether program graduates have the knowledge and skills requisite for practice and use of the title P.A.
- Make written recommendations to the boards concerning the rules to be developed for approval by the boards of physicians to supervise P.A.s.
- File an annual report with LARA and the boards containing matters prescribed by LARA and the boards.

Under the bill, LARA would have to perform these activities in consultation with the task force. The bill would eliminate the tasks related to development and publication of guidelines on delegation to and supervision of P.A.s, recommendations concerning rules to supervise P.A.s, and the annual report.

The Code allows a P.A. to perform routine visual screening or testing, postoperative care, or assistance in the care of medical diseases of the eye under the supervision of a physician. The bill would refer to a practice agreement rather than the supervision of a physician.

The bill would delete a provision requiring a P.A. to provide medical care services only under the supervision of a physician (except in an emergency situation), and only if those services are within the supervising physician's scope of practice and are delegated by that physician.

Currently, under Parts 170 and 175, a P.A. may make calls or go on rounds under a physician's supervision. The bill instead would allow a P.A. to make calls or go on rounds in accordance with a practice agreement. In provisions related to drugs prescribed by a P.A. and complementary starter dose drugs ordered, received, and dispensed by a P.A., the bill would refer to a physician's assistant who was a party to a practice agreement, rather than a P.A. performing a delegated act of a supervising physician. The bill would add similar provisions to Part 180 regarding a P.A. who had a practice agreement with a podiatrist.

The bill would repeal Section 17066, which requires the standards and decisions regarding the qualifications of physician assistants to be designed to determine that each P.A. has the necessary knowledge and skill to perform in a safe and competent manner with due regard to the complexity and risks attendant to activities that may be delegated by a physician or podiatrist to a P.A.

Disciplinary Action

Part 161 (General Provisions) of the Code requires LARA to investigate allegations that grounds exist for disciplinary action against a licensee or registrant, and authorizes LARA to investigate activities related to the practice of a health profession licensee, registrant, or applicant for licensure or registration. After its investigation, LARA must provide a copy of the administrative complaint to the appropriate disciplinary subcommittee, which must impose sanctions if it finds that any of the grounds prescribed in the Code exist. The bill would include among the grounds for disciplinary action failure to comply with the terms of a practice agreement pertaining to the process between a P.A. and participating physician or podiatrist for communication, availability, and decision-making, or protocol for designating an alternative physician for consultation. The sanctions for this violation would include denial, revocation, probation, suspension, or limitation of a license; a reprimand; or a fine.

Pharmacy Practice & Drug Control

Under Part 177 (Pharmacy Practice and Drug Control), the term "prescriber" means a licensed dentist, doctor of medicine, doctor of osteopathic medicine and surgery, doctor of podiatric medicine and surgery, optometrist certified to administer therapeutic pharmaceutical agents, veterinarian, or another licensed health professional acting under the delegation and using, recording, or otherwise indicating the name of the delegating licensed doctor of medicine or osteopathic medicine and surgery. The bill would include a licensed P.A. in the definition.

The bill would delete several provisions allowing a dispensing prescriber without an on-site pharmacy to delegate the dispensing or delivery of prescription drugs to a P.A. in certain settings without an on-site pharmacy, if the delegating dispensing prescriber is responsible for the clinical supervision of the P.A.

MCL 333.7303a et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.