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UPDATING RULES FOR PHYSICIAN'S ASSISTANTS

House Bill 5533 as enacted
Public Act 379 of 2016
Sponsor: Rep. Edward J. Canfield, D.O.
House Committee: Health Policy
Senate Committee: Health Policy
Complete to 1-5-17

BRIEF SUMMARY: House Bill 5533 would amend the Public Health Code to revise the regulation of physician's assistants (PAs).

According to the bill sponsor, the bill would remove terms such as "supervision" and "delegation," which do not accurately describe the physician-physician's assistant relationship, from current law, and modernize the language to reflect a team-based approach. It would add *physician's assistants* to the list of authorized "prescribers" under the Code; provide that the medical, osteopathic, and podiatric boards may restrict certain medical care services within a practice agreement if that service requires extensive experience or poses serious risks to the health of patients; and prescribe penalties for failure to comply with a practice agreement.

The following definitions reflect the change from supervision to a collaborative relationship governed by a "practice agreement," described in greater detail below.

Practice as a physician's assistant: the practice of medicine (Sec. 17001), osteopathic medicine and surgery (Sec. 17501), or podiatric medicine and surgery (Sec. 18001) with a participating physician or podiatrist under a practice agreement.

Participating physician: a physician, a physician designated by a group of physicians practicing other than as sole practitioners to represent that group, or a physician designated by a health facility or agency to represent that health facility or agency.

Participating podiatrist: a podiatrist or a podiatrist designated by a group of podiatrists to represent that group.

FISCAL IMPACT: House Bill 5533 will not likely have any significant fiscal impacts for the Department of Licensing and Regulatory Affairs. LARA, in consultation with the Michigan Board of Medicine, the Michigan Board of Osteopathic Medicine, and the Michigan Board of Podiatric Medicine, is enabled to promulgate rules for a variety of activities that physician's assistants undertake, but this will likely not result in any significant costs for the department. The bill would not have any significant fiscal impact on other units of state or local government.

THE APPARENT PROBLEM:

Michigan, as well as the entire country, is said to be already in the throes of a physician shortage, and many predict the situation to worsen in coming years. Many believe that one way to improve access to quality care, especially in rural areas where the physician shortage is particularly acute, is to allow increased autonomy to physician's assistants.

This legislation is offered to ensure that the Public Health Code more accurately describes the relationship between physician and physician's assistant.

THE CONTENT OF THE BILL:

Practice Agreement

Three new sections, 17047, 17547, and 18047, in the medicine, osteopathic medicine and surgery, and podiatric sections of the Public Health Code, respectively, would provide that a physician's assistant may only practice as a PA under the terms of a ***practice agreement*** that includes all of the following:

- A process between the PA and participating physician or podiatrist for communication, availability, and decision making when providing medical treatment to a patient. The process must utilize the knowledge and skills of the PA and participating physician or podiatrist based on their education, training, and experience.
- A protocol for designating an alternative physician for consultation in situations in which the participating physician or podiatrist is not available for consultation.
- The signatures of the PA and the participating physician or podiatrist.
- A termination provision that allows the PA or participating physician or podiatrist to terminate the practice agreement by providing written notice at least 30 days before the date of termination.
- Subject to certain restrictions which may be placed by the boards of medicine or osteopathic medicine and surgery, the duties and responsibilities of the PA and participating physician or podiatrist. The practice agreement shall not include as a duty or responsibility of the PA or participating physician or podiatrist an act, task, or function that the PA or participating physician or podiatrist is not qualified to perform by education, training, or experience and that is not within the scope of the license held by the PA or participating physician or podiatrist.
- A requirement that the participating physician or podiatrist verify the PA's credentials.

No statutory ratio of PAs to participating physician or podiatrist

Currently, a solo practitioner or a physician or podiatrist who treats patients on an outpatient basis may not supervise more than four PAs or, if the physician or podiatrist supervises the PAs at more than one practice site, not more than two PAs by a method other than the physician or podiatrist's physical presence at the practice site. If the physician or podiatrist is under contract to or has privileges at a health facility or agency licensed under Article 17 or at a state correctional facility, the physician or podiatrist may supervise more than four PAs at that facility.

Under the bill, there would not be a numerical limit on the number of PAs with whom a physician or podiatrist may enter into a practice agreement, or to whom they may delegate the authority to perform acts, tasks, or functions. Instead, the number would be subject to section 16221, which authorizes LARA to investigate general negligence, in addition to other wrongdoing. In other words, a physician or podiatrist may not work with more PAs than can be adequately managed without risking actions constituting general negligence.

Failure to comply with a practice agreement

Currently, the Code provides that LARA must investigate allegations that grounds exist for disciplinary subcommittee action, and may investigate activities related to the practice of a health profession by a licensee, registrant, or applicant. If the appropriate disciplinary subcommittee finds a qualifying violation, the Code requires corresponding sanctions.

The bill would add "failure to comply with the terms of a practice agreement" to the list of offenses, which would be punishable by denial, revocation, probation, suspension, limitation, reprimand, or fine.

Potential limitations to be imposed by LARA and medical boards

Certain medical care restricted to physicians or podiatrists: The boards of medicine, osteopathic medicine and surgery, and podiatric medicine and surgery may prohibit or otherwise restrict certain medical care services within a practice agreement if those services require extensive medical training, education, or ability, or poses serious risks to the health and safety of patients. Additionally, except for medical care services provided in a practice agreement, the boards may restrict the delegation of certain services, or require higher levels of supervision.

Board may prohibit entry into practice agreement for disciplinary issues: The boards may prohibit a PA, physician, or podiatrist from entering into a practice agreement for grounds set forth in Section 16221 of the Code, including negligence, failure to exercise due care, personal disqualifications such as incompetence, prohibited acts, unethical business practices, or unprofessional conduct.

Reduced responsibilities for a participating physician or podiatrist

Because the practice agreement would govern the relationship between the participating physician or podiatrist and PA, several responsibilities currently required of a participating physician or podiatrist would be removed. Provisions would which be **removed** by the bill include the following:

- A physician may not delegate ultimate responsibility for the quality of medical care services, even if those responsibilities are provided by a PA.
- A supervising physician may delegate in writing to a PA the ordering, receipt, and dispensing of complimentary starter dose drugs including certain controlled substances. Both the physician's and the PA's names and DEA registration numbers will be used for these acts.

- A physician or podiatrist supervising a PA is responsible for verifying the PA's credentials, evaluating the PA's performance, monitoring the PA's practice and provision of medical care services.

Currently, if a physician or podiatrist practices as a member of a group of physicians or podiatrists, one member may be designated to fulfill the responsibilities listed above. The bill would instead allow a group of physicians or podiatrists to designate a member to enter into a practice agreement with the PA. If a practice agreement exists between a physician or podiatrist and a PA, the physician or podiatrist is not required to countersign orders written in a patient's clinical record by the PA, in spite of any rule to the contrary.

In addition, while current law allows a PA to make house calls or go on rounds "under the supervision of a physician," the bill would replace that language with a provision allowing a PA to do so "in accordance with a practice agreement." Likewise, current law requires that a PA prescribe a drug, including schedule 2 to 5 controlled substances, only "as a delegated act of a supervising physician" and requires the names and DEA numbers of both parties on the prescription. Under HB 5533, a PA who is a party to a practice agreement would be able to prescribe a controlled substance without delegation, and using only the PA's name and DEA number. A PA would also be able to order, receive, and dispense complimentary starter dose drugs without supervision or delegation by a physician.

Current law does not make provisions for PAs working with podiatrists concerning house calls, rounds, prescribing drugs, or dispensing complimentary starter dose drugs. The bill would create new sections for these topics, and would apply the same rules as the new rules for PAs working with physicians, as described above.

Under the bill, LARA, in consultation with the respective board (medical, osteopathic, or podiatric) may promulgate rules concerning the prescribing of these drugs by PAs, including limits on the drugs or classes of drugs which a PA may not prescribe and other procedures and protocols necessary to promote consistency with federal and state drug control and enforcement laws.

Patient rights

The bill would also make additional changes throughout the Code which would acknowledge the new relationship between PA and physician. Whereas current law guarantees a patient to certain communication and care from a physician or a PA "to whom the physician has delegated" that responsibility, the bill would state that those services be provided by a physician or PA "with whom the physician has a practice agreement."

BACKGROUND INFORMATION:

According to information on the website of the American Academy of Physician Assistants, Physician's Assistants, or PAs, "practice medicine on healthcare teams with physicians and other providers. They practice and prescribe medication in all 50 states, the District of Columbia, the majority of the U.S. territories and the uniformed services."

Under physician delegation, PAs deliver a broad range of medical and surgical services, including conducting physical exams, obtaining medical histories, diagnosing and treating illnesses, writing prescriptions, ordering and interpreting tests, counseling on preventive health care, and assisting in surgery. Most PA programs require a bachelor's degree and some medical experience before entry. A typical program is about 24-32 months long and includes both classroom and clinical instruction. National certification requires passing the national certification examination administered by the National Commission on Certification of Physician Assistants. To maintain national certification, PAs must complete 100 hours of continuing medical education every two years and complete a recertification exam every 10 years. In Michigan, a PA must be licensed under the Public Health Code.

The bill would further expand autonomy for PAs from the levels instituted by Public Act 210 of 2011. In that act, language was added allowing a PA to make calls or go on rounds "under the supervision of a physician" in private homes and other facilities. In this bill, the supervision component is removed and replaced with a provision that a PA may make calls or go on rounds in those facilities "in accordance with a practice agreement." This gives the contracting individuals the freedom to provide for responsibility and communication on a case-by-case basis as appropriate, and also acknowledges PAs' function as partners rather than subordinates.

ARGUMENTS:

Against:

Some argued that the removal of a numerical limit on the number of PAs with whom a supervising physician could enter into a practice agreement would leave the provision open to abuse. Indeed, without a limit of four PAs to a supervising physician, a physician could enter into practice agreements with ten or twenty PAs, potentially leaving the PAs without adequate support.

Response:

While the bill does remove a specific limit, it makes the number subject to the general negligence standard in section 16221 of the Code. This seeks to ensure that physicians only enter into practice agreements with the number of PAs they can adequately manage, with the risk of investigation by LARA and the sanctions enumerated in section 16226 as the alternative outcome.

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