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BILL ANALYSIS



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Senate Bill 683 (as introduced 11-30-17)
Sponsor: Senator Margaret E. O'Brien
Committee: Health Policy

Date Completed: 3-6-18

CONTENT

The bill would amend Article 15 (Occupations) of the Public Health Code to do the following:

- **Provide for the licensure, rather than registration, of acupuncturists.**
- **Require the Department of Licensing and Regulatory Affairs (LARA), in conjunction with the Michigan Board of Acupuncture, to promulgate rules setting forth the minimum standards for licensure as an acupuncturist and implement a licensure program for the practice of acupuncture.**
- **Require LARA to issue a license to an applicant who met current and proposed licensing requirements.**
- **Prohibit a person from practicing as an acupuncturist without a license or other authority, after the rules took effect.**
- **Exempt from licensure certain individuals and practices.**
- **Prohibit a licensed physician or surgeon from delegating an act, task, or function to an individual who was not licensed and who was performing acupuncture, beginning 12 months after promulgated rules took effect.**
- **Require a licensed acupuncturist seeking license renewal to furnish to the Board with evidence that he or she had attended continuing education courses or programs related to the practice of acupuncture.**
- **Apply current registration fees to licensure and prescribe fees for a limited license and a temporary license.**
- **Require at least one physician who was serving on the Board to have completed at least 300 hours of systematic acupuncture education.**

The bill would take effect 90 days after it was enacted.

Licensure of Acupuncturists

Part 165, within Article 15, governs the practice of acupuncture and the registration of acupuncturists. As discussed below, the bill would amend Part 165 to provide for the licensure, rather than registration, of acupuncturists.

The bill would require the Department, in consultation with the Michigan Board of Acupuncture, to implement a licensure program for the practice of acupuncture.

Currently, "acupuncture" means the insertion and manipulation of needles through the surface of the human body at specific locations for the prevention and correction of disease, injury, pain, or other condition. The bill, instead, would define "acupuncture" as the insertion and

manipulation of needles through the surface of the human body. The term would include laser acupuncture, electroacupuncture, pricking therapy, dry needling, and intramuscular stimulation (terms the bill would define).

The bill would define "practice of acupuncture" as the use of traditional and contemporary East Asian medical theory to assess and diagnose a patient through East Asian medicine techniques. The term would not include the practice of medicine, the practice of osteopathic medicine and surgery, the practice of physical therapy, or the practice of massage therapy, as those terms are defined in the Code.

"East Asian medicine techniques" would include acupuncture, manual therapy, moxibustion, heat therapy, dietary counseling, therapeutic exercise, acupressure, cupping, dermal friction, homeopathy, lifestyle coaching, and treatment with herbal medicines (terms that the bill also would define).

Rule Promulgation

The Code requires the Department, in consultation with the Board, to promulgate rules setting forth the minimum standards for registration as an acupuncturist.

The bill, instead, would require LARA, in consultation with the Board, to promulgate rules establishing the minimum standards for licensure as an acupuncturist, within 12 months after the bill's effective date.

The Code prohibits LARA, in consultation with the Board, from promulgating rules that diminish competition or exceed minimum level of regulation necessary to protect the public. The bill would delete this provision.

Acupuncturist License Issuance

Under the bill, except as provided below (for an individual meeting one of two criteria), LARA would have to issue a license to an applicant who met the licensing requirements of Section 16174 of the Code and the requirements for licensure established in promulgated rules. (Section 16174 requires an individual who is licensed or registered under Article 15 to be at least 18 years old, be of good moral character, have a specific education or experience in the health profession prescribed by Article 15 or rules of a board, have a working knowledge of the English language, and pay the appropriate fees.)

In promulgating rules for this purpose, the Department, in consultation with the Board, could adopt by reference the professional standards issued by a certified program recognized by the National Commission for Certifying Agencies.

In addition, within 12 months after the promulgated rules took effect, LARA would have to issue a license to an applicant who met the requirements of Section 16174 and one of the following:

- He or she was a registered acupuncturist.
- The applicant demonstrated to the satisfaction of the Board that he or she had the education, training, and experience appropriate to the practice of acupuncture as established in promulgated rules.

In promulgating rules for this purpose, the Department, in consultation with the Board, would have to consider the following:

- Whether, in the three years immediately preceding the application, an applicant had used acupuncture to treat an average of 30 patients per year, had averaged 250 patient visits per year, and had used acupuncture to treat patients with general health conditions.
- Whether an applicant had completed systematic acupuncture education that included live lectures, demonstrations, and supervised clinical training specific to acupuncture.

In determining whether such an applicant had met the requirements for licensure, the Board would have to consider patient, billing, education, or training records, or any other evidence submitted to that Board that it considered credible. An applicant would have to ensure that any document provided to the Board for these purposes ensured the confidentiality of a patient's identity.

Scope of Practice

Beginning on the date promulgated rules took effect, an individual could not engage in the practice of acupuncture unless he or she was licensed or was otherwise authorized under Article 15. For a period not exceeding 12 months from the date the rules took effect, a registered acupuncturist could, without a license, continue to use the title "acupuncturist", "registered acupuncturist", or "certified acupuncturist" and engage in the practice of acupuncture.

Part 165 would not apply to any of the following:

- An individual licensed, registered, or otherwise authorized under any other part or act who was performing activities that were considered to be within the practice of acupuncture if those activities were within the individual's scope of practice and if the individual did not use the protected words, titles, or letters, except as otherwise provided.
- A physician who was licensed under Part 170 (Medicine) or Part 175 (Osteopathic Medicine and Surgery) if the physician had completed at least 300 hours of systematic acupuncture education that included at least 100 hours of live lectures, demonstrations, and supervised clinical training specific to acupuncture.
- An individual performing acupuncture, cupping, dermal friction, dietary counseling, heat therapy, herbal medicine, homeopathy, lifestyle coaching, manual therapy, or therapeutic exercise, while he or she was engaged in the scope of practice of a profession with established standards and ethics if the services were not designated as or implied to be the practice of acupuncture and the individual did not use the protected titles, words, or letters.
- Dry needling by an individual licensed, registered, or other authorized if needling were within the individual's scope of practice.

Additionally, Part 165 would not apply to an individual who met all of the following:

- He or she met the requirements for a certificate of training as an acupuncture detoxification specialist issued by the National Acupuncture Detoxification Association (NADA) or a successor organization.
- He or she only used the auricular protocol for substance use disorder prevention and treatment developed by NADA or a successor organization.
- He or she was under the supervision of an acupuncturist or a physician licensed under Part 170 or Part 175 when using the auricular protocol.
- He or she did not use the protected words, titles, or letters.

The Code permits a licensee who is an allopathic physician or osteopathic physician and surgeon to delegate an act, task, or function to an individual who is not licensed under Article

15 and who is performing acupuncture. Under the bill, this would apply until 12 months after the date promulgated rules took effect.

License Renewal

The bill would require the Board to promulgate rules requiring a licensee seeking renewal of a license to furnish the Board with satisfactory evidence that, during the immediately preceding license cycle, the licensee had attended continuing education courses or programs approved by the Board in subjects related to the practice of acupuncture and designed to further educate licensees. An individual would be considered to have completed the continuing education requirements if the Board determined that the individual had met the continuing education standards of the National Certification Commission for Acupuncture and Oriental Medicine or equivalent standards as determined by the Board.

The Board would have to promulgate rules requiring each applicant for license renewal to complete as part of the continuing education courses or programs an appropriate number of hours or courses in pain and symptom management.

Fees

Currently, an individual who is registered or seeking registration as an acupuncturist must pay a \$75 application processing fee and a \$200 license fee, per year. The bill would retain these fees for an individual licensed or seeking licensure to engage in the practice of acupuncture. In addition, the bill would prescribe a \$200 limited license fee, per year, and a \$200 temporary license fee.

Board of Acupuncture

Currently, the Michigan Board of Acupuncture consists of the following members:

- Seven acupuncturists.
- Three physicians licensed under Part 170 or Part 175.
- Three public members.

Under the bill, at least one of the physicians would have to have completed at least 300 hours of systematic acupuncture education that included at least 100 hours of live lectures, demonstrations, and supervised clinical training specific to acupuncture.

Title Protection

The Code restricts the use of certain words, titles, and letters only to those people authorized to use them. The bill also would include "licensed acupuncturist", "L.AC.", and a similar word of initial that indicated that the individual was an acupuncturist.

MCL 333.16215 et al.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would potentially have a small negative impact upon the Department of Licensing and Regulatory Affairs and would have no impact on local units of government.

The bill would require LARA and the Board of Acupuncture to issue licenses to acupuncturists, set continuing education standards for licensed acupuncturists, and promulgate rules for licensure and license renewal requirements. The Department has staff on hand to assist the

Board in the promulgation of rules, which is expected to be a potential minor cost that the Department would absorb.

Currently, LARA registers acupuncturists. Part 165 prohibits the use of the term "registered acupuncturist" and similar terms in advertising when used by nonregistered acupuncturists. Current law does not prohibit the practice of acupuncture without a State-issued registration. The bill would require licensure and prohibit the practice of unlicensed acupuncture. If a license for the practice of acupuncture were required, applications for licensure could rise within the next 12 months, which could increase fee revenue; however, once the licensure requirement went into effect, the Department could see an increase in costs for enforcement of unlicensed practice. It is not known how many unregistered individuals in Michigan currently offer services related to acupuncture.

Fiscal Analyst: Michael Siracuse

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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.