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BILL ANALYSIS



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Senate Bill 683 (Substitute S-3 as passed by the Senate)
Sponsor: Senator Margaret E. O'Brien
Committee: Health Policy

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RATIONALE

Originating in China several thousand years ago, acupuncture is a complementary health care approach in which practitioners stimulate specific points on the human body, typically by inserting thin needles into or applying pressure to those points. Traditional Chinese medicine utilizes acupuncture as a technique for balancing a person's life force energy, "qi", by inserting needles into specific points along the meridians, or pathways in the body through which the energy circulates. Many Western practitioners use acupuncture points to stimulate nerves, muscles, and connective tissues. Reportedly, acupuncture has proven effective for improving chronic conditions, such as pain, depression, and fatigue; reducing acute symptoms, such as nausea and vomiting, caused by cancer treatments; and treating alcohol and opioid addiction.

Although acupuncture is a common component of traditional East Asian medicine, it was first introduced in United States the 1970s, and only recently gained popularity. According to the 2012 National Health Interview Survey (NHIS), over 14.48 million adults in the United States have used or tried acupuncture, up from 8.19 million in 2002, and 14.01 million in 2007. (The NHIS is designed by the Centers for Disease Control and Prevention, and is administered annually by the United States Census Bureau.)

Evidently, Michigan is one of four states that does not license acupuncturists, although it does require that they register with the Department of Licensing and Regulatory Affairs in order to use the title "acupuncturist". However, some people believe that the lack of licensure deters acupuncturists from practicing in Michigan, and is detrimental to the growth of the profession. It has been suggested that the State allow for the licensure, rather than registration, of acupuncturists.

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 LARA 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, of the Code 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, the practice of occupational therapy, the practice of podiatric medicine and surgery, the practice of nursing, the practice of dentistry, the practice of massage therapy, or the practice of chiropractic, 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

Part 165 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.

Part 165 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.
- 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 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, LARA, in consultation with the Board, would have to promulgate rules establishing criteria for considering patient, billing, education, or training records, or other evidence of the applicant's education, training, and experience that was submitted to that Department. An applicant would have to ensure that any document provided to LARA for these purposes ensured the confidentiality of a patient's identity.

Scope of Practice

Beginning on the date the 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 he or she 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 engaged in the practice of a profession with established standards and ethics as long as those 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 otherwise 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 LARA, in consultation with the Board, to promulgate rules requiring a licensee seeking renewal of a license to furnish the Department 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 LARA 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 Department 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 or initial that indicated that the individual was an acupuncturist.

MCL 333.16215 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Acupuncture has been shown to reduce pain, provide relief from symptoms of many diseases and conditions, alleviate depression, and aid in the cessation of smoking and substance abuse. When performed by an untrained or incompetent practitioner, however, acupuncture can lead to infections, punctured organs, and the transmission of serious blood borne diseases. As the popularity of acupuncture as a complement to conventional medicine has grown, the State has recognized the importance of establishing a regulatory structure that ensures a minimum level of education, training, and competency to protect the public. This was accomplished under Public Act 30 of 2016, which provides for the registration of acupuncturists, and established certain minimum requirements those wishing to practice acupuncture in Michigan must meet.

With the proper training, acupuncture is a safe and effective treatment for a variety of medical conditions. However, if performed incorrectly, there is potential for nerve or organ damage, and the chance of infection increases. The bill would supplement the regulatory scheme created by Public Act 30 by ensuring that acupuncturists had the proper education, training, and certification to provide acupuncture services to patients. In the United States, there are minimum education and training standards that acupuncturists must meet, including having a master's degree, completing over 1,900 hours, and at least three years of training, and passing the national certification examination administered by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM). In order to be certified by the NCCAOM, and to be licensed in most states, acupuncturists also must complete a clean needle technique course. Currently, NCCAOM certification is required to be a registered with LARA.

Additionally, acupuncture often overlaps with similar treatments provided by physicians, physical therapists, massage therapists, naturopaths, life coaches, dieticians, and other healthcare professionals. The bill would clarify the scope of practice for acupuncturists in order to prevent loss of business for these other professions.

Supporting Argument

As acupuncture continues to move further into the mainstream of modern medicine, it is important that the State keep up with this growing profession. Currently, Michigan is one of only four states that does not offer licensure to acupuncturist. Because of this, the State has struggled to attract and retain professional acupuncturists. Evidently, many Michigan students who study acupuncture do not return to practice in Michigan because of the lack of licensure, unclear scope of practice, lack of insurance reimbursement, and the requirement that they practice under the supervision of a licensed physician. Instead, they relocate to a jurisdiction that does license acupuncturists, and that they believe is conducive to establishing a successful career.

In 2016, O*NET recognized acupuncture as a "Bright Outlook" occupation, which meant that it met at least one of the following criteria: 1) was projected to grow much faster than average (an increase of at least 14%) between 2014 and 2024; 2) was projected to have 100,000 or more job openings between 2014 and 2024; or 3) was a new and emerging occupation in a high growth industry. (O*NET is the Occupational Information Network, a free online database developed by the U.S. Department of Labor that contains occupational information for different professions in the United States. In 2016, O*NET recognized acupuncture as a Bright Outlook occupation that was expected to grow rapidly. As of August 2018, O*NET projects acupuncture to grow 10-14% between 2016 and 2026, and is expected to have more than 3,800 new job openings during same period.)

However, many people believe that registering, rather than licensing, Michigan acupuncturists hinders the growth of the profession because of the lack of regulatory and legal certainty for practitioners. The bill would establish regulatory standards for licensure that are similar to those in states that license acupuncturists. This would create a more favorable and conducive business environment for acupuncturists. The growth of the profession would be beneficial to Michigan's economy, and to the health of Michigan residents.

Supporting Argument

The National Acupuncture Detoxification Association (NADA) is a nonprofit organization founded in 1985 to train healthcare workers in the "NADA protocol", a five-point auricular (ear) acupuncture technique designed in response to the heroin and opiate crisis in New York in the 1970s. The NADA protocol is widely accepted, and the World Health Organization and the Michigan Bureau of Substance Abuse Services and Addiction (within the Michigan Department of Health and Human Services) have recognized the NADA protocol as an accepted therapy for the prevention and treatment of addiction and substance use disorder. The NADA protocol also is used to improve sleep, and to help people cope after episodes of trauma or disaster, such as those suffering from post-traumatic stress disorder.

Currently, the Public Health Code prohibits a person from using the words, titles, or letters "acupuncturist", "certified acupuncturist", or "registered acupuncturist" unless he or she is registered with LARA. However, the Code exempts from registration an individual certified by NADA. The bill would exempt these individuals from licensure if they were licensed by NADA as an acupuncture detoxification specialist, were only performing the NADA protocol for substance use disorder prevention and treatment, and were under the supervision of an acupuncturist or a physician. While acupuncture is not a cure-all for drug addiction, it has been proven to be a fast and effective tool to ease the withdrawal process. Exempting these individuals trained in the NADA protocol would allow them to continue to provide this important treatment.

Opposing Argument

The education of traditional acupuncturists is based primarily on East Asian and traditional Chinese medicine, which utilizes acupuncture as a technique for balancing a person's "qi". Medical acupuncture, however, is a scientific, evidence-based practice of acupuncture as a medical or clinical procedure that seeks to treat a patient's musculoskeletal pain and other pain-related conditions or disorders. In Michigan, medical acupuncture technicians are allied health providers who perform a technique often referred to as "dry needling", which involves the use of solid filiform needles or hollow-core hypodermic needles for the treatment of muscular pain. Although medical acupuncture technicians are permitted to practice in Michigan, they are not allowed to register with LARA because they are not certified by the National Certification Commission for Acupuncture and Oriental Medicine, which administers the certification examination. Many medical acupuncture technicians object to the traditional East Asian teachings of acupuncture and the NCCAOM certification examination because they are based in Taoist teachings. Because medical acupuncture technicians are not registered with LARA, the bill would deny them the ability to practice acupuncture in Michigan.

Blue Heron Academy of Health Arts and Sciences was founded in 1980 to provide free training and education to women in transition, and to men and women who had a desire to serve as health care professionals. Currently, Blue Heron Academy is approved and licensed by the Department of Licensing and Regulatory Affairs to provide training, certification, and diplomas in 19 different health career vocational programs, including acupuncture. Students who complete Blue Heron Academy's practical acupuncture program may earn an acupuncture technician certification. Blue Heron Academy has suspended its training programs because, under the bill, these acupuncture technicians would not be permitted to practice in the State.

Although the bill contains language that would exempt certain acupuncture practitioners from the licensure requirements, the language is insufficient to protect medical acupuncture technicians, such as those educated at Blue Heron Academy. The bill should include an exemption for individuals who were certified by the American Manual Medicine Association (AMMA), had successfully passed the Practical Acupuncture Public Safety Certification Exam administered by the National Board Certification Agency, had been certified as a practical acupuncture technician by the AMMA, and practiced under the delegation and supervision of a licensed osteopathic or medical physician.

Response: The bill would not prohibit other licensed professionals, such as medical and osteopathic physicians, from continuing to perform activities that are considered to be within the practice of acupuncture if their scopes of practice permitted them to do so, and they had completed at least 300 hours of systematic acupuncture education, including live lectures, demonstrations,

and supervised clinical training specific to acupuncture. For individuals not registered with LARA, the bill would require the Department to issue a license to an applicant if he or she demonstrated to the Board of Acupuncture's satisfaction that he or she had the education, training, and experience appropriate to the practice of acupuncture. Additionally, the bill would not apply to dry needling performed by an individual who was licensed, registered, or otherwise authorized under the Public Health Code if dry needling was within the individual's scope of practice.

Opposing Argument

The bill's licensing requirements and regulatory provisions would not apply to dry needling performed by an individual licensed, registered, or otherwise authorized under the Public Health Code if dry needling were within the individual's scope of practice. However, this could lead to certain practitioners performing dry needling without the proper training required to perform this practice. Many dry needling practitioners, such as physician therapists, only take short, proprietary training courses that are not equivalent to the standards required to practice acupuncture, which include extensive supervised clinical experience.

In June 2016, the American Medical Association adopted a policy on dry needling recommending that nonphysicians practicing dry needling should, at minimum, meet standards similar to those for the training, certification, and continuing education that is required for acupuncturists. Without proper regulation, this practice could be detrimental to patients' and public safety. In order to ensure dry needling practitioners are properly trained, the bill should include language specifying that practitioners whose scopes of practice permit dry needling should be required to submit to their respective State regulatory boards documentation that he or she had completed at least 300 hours of dry needling and/or neuromuscular acupuncture training, including 100 hours of supervised clinical training. Additionally, the bill should refer to "dry needling acupuncture", instead of "dry needling", and should clarify that dry needling acupuncture also means a therapeutic procedure. It also should specify that dry needling acupuncture would not mean the stimulation of channel or organ related acupoints, auricular (ear) points, or other acupuncture microsystem points, such as the scalp, hands, or abdomen.

All licensed professionals who incorporate acupuncture techniques and styles in their scopes of practice should ensure that they are providing the public with accessible, safe, and consistent levels of acupuncture practice, and adhering to proper training and education standards.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill potentially would 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.