

## LICENSURE OF ACUPUNCTURISTS

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<http://www.house.mi.gov/hfa>

House Bill 4710 (H-2) as reported from committee

Sponsor: Rep. Bronna Kahle

1st Committee: Health Policy

2nd Committee: Ways and Means

Complete to 9-17-19

Analysis available at  
<http://www.legislature.mi.gov>

*(Enacted as Public Act 140 of 2019)*

**BRIEF SUMMARY:** House Bill 4710 would amend Part 165 of the Public Health Code, which governs acupuncture, to replace the current registration of acupuncturists with licensure of acupuncturists.

**FISCAL IMPACT:** House Bill 4710 would have an indeterminate fiscal impact on LARA. The bill would likely cause increases to the department's expenditures and revenues, but the net fiscal impact of the bill would depend on the level of expenditures compared to the level of revenues, which is currently indeterminable. (See **Fiscal Information** for a detailed analysis.)

### ***THE CONTENT OF THE BILL:***

#### **Scope of practice**

The bill would stipulate that the practice of acupuncture does not include the practice of medicine, osteopathic medicine and surgery, physical therapy, occupational therapy, podiatric medicine or surgery, nursing, dentistry, massage therapy, or chiropractic.

Currently, a licensed allopathic (M.D.) or osteopathic (D.O.) physician is allowed to delegate an act that requires surgical instrumentation if the procedure will be supervised by a licensed M.D. or D.O. and the person performing it is an M.D. or D.O. student or a student in a physician's assistant training program. The bill would provide that, until 36 months after the bill took effect, an M.D. or D.O. could delegate that task to an individual performing acupuncture.

#### **Rules promulgated by LARA**

Within a year after the bill took effect, the Department of Licensing and Regulatory Affairs (LARA) would have to promulgate rules establishing the minimum standards for licensure as an acupuncturist and implement the license program for the practice of acupuncture.

Once the rules took effect, an individual could not practice acupuncture unless he or she was licensed under Part 165 of the code or otherwise authorized under the occupations article of the code. However, for up to 36 months after the rules took effect, a registered acupuncturist could continue to use the titles "acupuncturist," "registered acupuncturist," or "certified acupuncturist" and engage in the practice of acupuncture.

### **Issuance of a license**

By 36 months after the rules took effect, LARA would have to issue a license to an applicant who had passed a background check and was either a registered acupuncturist or had the education, training, and experience appropriate to the practice of acupuncture as established under the rules promulgated by LARA.

Likewise, by 36 months after the rules took effect, LARA would have to issue a limited license to an applicant who had passed a background check, had been performing acupuncture under a specified M.D. or D.O. for at least two years, and held a license to engage in another health profession. A limited licensee could engage in acupuncture only under the supervision of the specified M.D. or D.O. and could not collect payment from an insurer for performing a service that was within the scope of practice of acupuncture.

### **License renewal**

LARA, in consultation with the Board of Acupuncture, would have to promulgate rules requiring a licensee seeking renewal of a license to produce evidence of participation in continuing education programs related to acupuncture. An individual would be considered to have completed this requirement if LARA determined that he or she had met the continuing education standards of the National Certification Commission for Acupuncture and Oriental Medicine or equivalent standards.

The continuing education requirement would have to include an appropriate number of hours or course in pain and symptom management.

In addition to the continuing education requirements, LARA would have to require a limited license applicant to hold a license to engage in another health profession as a condition of renewal.

### **Licensure fees**

Fees for registration as an acupuncturist currently include a \$75 application processing fee and \$200 annual registration fee. The bill would retain the \$75 application fee and would set yearly license, limited license, and temporary fees at \$200 each.

### **Board of Acupuncture**

The bill would increase the number of acupuncturists on the Board of Acupuncture from four to seven. It would also require that at least one of the physicians currently required to sit on the board have completed at least 300 hours of systematic acupuncture education, including at least 100 hours of live lectures, demonstrations, and supervised clinical training specific to acupuncture.

### **Protected terms**

The bill would prohibit an individual from using "licensed acupuncturist," "L.Ac.," or similar words or initials regarding licensure that indicate that the individual is an acupuncturist, unless he or she were authorized to do so under Part 165. Currently, physicians and individuals certified by the National Acupuncture Detoxification Association (NADA) are excluded from the prohibition on using certain acupuncture-related titles. The bill would remove this exception.

### **Exemptions from the rules governing acupuncturists**

In addition to specified exemptions to required licensure (for instance, for students in health professions and health professionals performing official duties for the military), Part 165 of the code would not apply to any of the following:

- An individual licensed, registered, or authorized under existing law who is performing activities considered to be within the practice of acupuncture if those activities are within his or her scope of practice and the individual did not use the protected words or titles described above.
- An M.D. or D.O. 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 who meets the requirements for a certificate of training by NADA or a successor organization, who only uses the auricular protocol for substance use disorder prevention and treatment developed by NADA under the supervision of an M.D., D.O., or acupuncturist, and who does not use the protected terms described above.
- An individual performing acupressure, cupping, dermal friction, dietary counseling, heat therapy, herbal medicine, homeopathy, lifestyle coaching, manual therapy, or thermal exercise, while engaged in the practice of a profession with established standards and ethics, as long as those services were not designated or implied to be the practice of acupuncture and the individual did not use the protected terms above.
- Dry needling by an individual licensed, registered, or otherwise authorized under any other part if dry needling were within the individual's scope of practice.

The bill would take effect 90 days after enactment.

MCL 333.16215 et seq. and proposed MCL 333.16513 et seq.

### ***BACKGROUND INFORMATION:***

This bill is similar to Senate Bill 683 of the 2017-18 legislative session, which was passed by the Senate and reported from the House Health Policy committee.<sup>1</sup> In HB 4710, certain requirements such as licensure issuance would be required within 36 months after the rules take effect, instead of the 12-month timeline proposed in SB 683. Also, HB 4710 would provide for issuance of a limited license.

### ***FISCAL INFORMATION:***

The bill would establish fees for licensure in acupuncture, largely in line with fees that are presently collected for registration in acupuncture. Under the bill, fees applicable to licensure in the practice of acupuncture would be as follows: a \$75 application processing fee, a \$200 annual license fee, a \$200 annual limited license fee, and a \$200 temporary license fee. The bill would require LARA to promulgate rules pertaining to the licensure of acupuncturists; however, these costs would be sufficiently covered by existing departmental appropriations. Under the bill, licensure would be required for practicing as

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<sup>1</sup> House Fiscal Agency analysis of SB 683. <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-0683-76BFFA26.pdf>

an acupuncturist, so it is likely that LARA would see increased licensure application volumes in the short run.

**ARGUMENTS:**

**For:**

Proponents argued for acupuncture as a way for patients to alleviate pain without being prescribed opioids. With the ongoing opioid epidemic, there has been a move to increase support for non-opioid pain management options. In February of 2018, the U.S. Veterans Health Administration (VHA) began recognizing licensed acupuncturists as having a stand-alone profession and allowing them to practice at the VHA medical centers.

Currently, supporters stated, offering a registration instead of a license presents a barrier to growth in the field of acupuncture. Accordingly, those interested in becoming acupuncturists often end up leaving Michigan to practice in one of the many states that offer a state license (reportedly, only three other states do not license acupuncturists—Alabama, Oklahoma, and South Dakota<sup>2</sup>).

**Against:**

Opponents argued that the state should only be licensing medical fields whose practices are supported by science and evidence. Purportedly, acupuncture recognizes “chi,” or the flow of energy between points in a body, and believes that those energy points can be accessed and manipulated, which critics argue is not fact-based or worthy of state licensure.

**POSITIONS:**

Representatives of the Michigan Association of Acupuncture and Oriental Medicine testified in support of the bill. (6-20-19)

The Michigan Physical Therapy Association indicated support for the bill. (6-20-19)

Blue Heron Academy indicated a neutral position on the bill. (6-20-19)

Representatives of the following organizations testified in opposition to the bill (6-20-19):

Center for Inquiry Michigan

Michigan Medical Acupuncture Association

Legislative Analyst: Jenny McInerney

Fiscal Analyst: Marcus Coffin

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

<sup>2</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6205763/>