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House Bill 4710 (Substitute H-2 as passed by the House)  
Sponsor: Representative Bronna Kahle  
House Committee: Health Policy  
Ways and Means  
Senate Committee: Health Policy and Human Services

Date Completed: 10-9-19

### **CONTENT**

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

- **Change the heading of Part 165 to "Acupuncture".**
- **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.**
- **Require LARA to issue a limited license to an applicant who met certain 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 36 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 its enactment.

#### 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 by rule. (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 36 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 regarding licensure.

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 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 the Department. An applicant would have to ensure that any document provided to LARA for these purposes ensured the confidentiality of a patient's identity.

#### Limited License Issuance

Within 36 months after the rules regarding licensure took effect, the Department would have to issue a limited license to an applicant who met the requirements of Section 16174, and who, at the time of the application, met all of the following requirements:

- The applicant held a license to engage in another health profession.
- The applicant had been performing acupuncture under the supervision of a physician licensed under Part 170 (Medicine) or Part 175 (Osteopathic Medicine and Surgery) for at least two years as of the effective date of the bill.

An applicant who performed acupuncture under the supervision of a physician would have to include the name of the physician under which he or she was engaging in the practice of acupuncture on the application for limited licensure.

An individual who was granted a limited license under the bill would have to comply with the following:

- He or she could engage in the practice of acupuncture only while he or she was under the supervision of the physician named in the application for limited licensure and would have to notify the Department immediately if the physician named in the application were no longer willing or able to supervise the individual.
- He or she could not collect payment from an insurer for performing a service that was within the practice of acupuncture.

("Insurer" would mean that term as defined in Section 106 of the Insurance Code: an individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds organization, fraternal benefit society, or other legal entity, engaged or attempting to engage in the business of making insurance or surety contracts.)

#### Scope of Practice

Beginning on the effective date of the licensure rules, 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 36 months from the date the licensure rules took effect, a registered acupuncturist could, without a license, continue to use the title "acupuncturist", "registered acupuncturist", or "certified acupuncturist" and could 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 allows 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 36 months after the date promulgated rules on the licensure of acupuncturists 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.

In addition, the Department would have to require an applicant seeking renewal of a limited license granted by the bill to hold a license to engage in another health profession at the time of his or her application for renewal as a condition of renewal of his or her limited license.

#### 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.

Legislative Analyst: Tyler VanHuyse

## **FISCAL IMPACT**

The bill likely would have a minor negative fiscal impact on the Department of Licensing and Regulatory Affairs and no fiscal impact on local government units. Currently, registered acupuncturists pay an application fee of \$75 and an annual registration fee of \$200. Under the bill, the application fee would remain at the current level and the annual fee also would be maintained as a license fee. Limited and temporary license fees each would be \$200.

There were 214 registered acupuncturists in the State at the beginning of fiscal year 2019-20. The Department could experience a minor increase in revenue during the transition period and from those seeking limited or temporary licenses. However, this revenue would be partially offset by associated processing and administration costs. It is unknown how many individuals would seek licensure under the bill.

Rule promulgation required by the bill would be funded out of existing appropriations.

Fiscal Analyst: Elizabeth Raczkowski

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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.