

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 167

(Senator Carozza)

Finance

Health and Government Operations

Physician Assistants - Revisions (Physician Assistant Modernization Act of 2024)

This bill requires a physician assistant (PA) to have a “collaboration agreement” rather than a delegation agreement and authorizes a PA who has provided notice of an executed collaboration agreement to the State Board of Physicians (MBP) to practice medical acts that are authorized under a license issued by MBP and the PA’s collaboration agreement (rather than medical acts delegated by a supervising physician under an approved delegation agreement). A PA may perform additional duties within a PA’s scope of practice, as specified, and may perform specified advanced duties with authorization from MBP. By January 1, 2025, MBP (with representatives of the Maryland Academy of Physician Assistants, the Physician Assistant Education Association, and PA education programs in the State) must review and update the list of advanced duties for PAs. The bill also alters the education and examination requirements for licensure, alters the membership for the Physician Assistant Advisory Committee, and makes other conforming changes.

Fiscal Summary

State Effect: MBP can implement the bill using existing budgeted resources. MBP special fund revenues are not materially affected, as discussed below.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Physician Assistant Licensure – Education and Examination Requirements

The bill alters the education requirements to qualify for a PA license to require that an applicant have successfully completed an educational program for PAs accredited by (1) the Accreditation Review Commission on Education for the Physician Assistant (rather than a training program approved by MBP as under current law) or (2) if completed before 2001, accredited by either the Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Programs. An applicant must also have passed the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants (NCCPA) (rather than having passed the PA national certifying examination administered by the NCCPA prior to 1986, maintained all continuing education and recertification requirements, and been in continuous practice since passage of the examination, as under current law).

Collaboration Agreements

The bill repeals provisions relating to delegation agreements. Instead, “collaboration agreement” means a document that outlines the “collaboration” between a PA and an individual physician or a group of physicians and is developed by a PA and the physician or group of physicians. A PA may practice only after providing notice to MBP (in a manner approved by MBP) of the executed collaboration agreement and each patient care team physician listed on the collaboration agreement. A copy of the collaboration agreement must be maintained at the practice setting. MBP may, at any time, audit and review a collaboration agreement kept by the licensee at the licensee’s primary place of business. A patient care team physician may not delegate medical acts under a collaboration agreement to more than eight PAs at one time (rather than four PAs for a supervising physician under a delegation agreement) with limited specified exceptions.

“Collaboration” means the communication and decision-making process among health care providers who are members of a “patient care team” related to the treatment of a patient that includes the degree of cooperation necessary to provide treatment and care to the patient and includes communication of data and information about the treatment and care of a patient, as specified, and development of an appropriate plan of care, including (1) decisions regarding the health care provided, (2) accessing and assessment of appropriate additional resources or expertise; and (3) arrangement of appropriate referrals, testing, or studies. Collaboration does not require the constant, physical presence of a collaborating physician on site in the practice setting if the collaborating physician is accessible by electronic means.

A collaboration agreement must contain (1) a description of the qualifications of the PA and the physician or group of physicians who developed the collaboration agreement with the PA; (2) any practice specialty of the physician or group of physicians; and (3) a description of the settings in which the PA will practice (as under current law for a delegation agreement). A collaboration agreement may include provisions limiting the PA's scope of practice, specifying office procedures, or otherwise detailing the practice of the PA as agreed by the physician or group of physicians and the PA. A patient care team physician may be added to or removed from a collaboration agreement by providing notification to MBP.

MBP may modify a collaboration agreement if it finds that the collaboration agreement does not meet the requirements of the bill, or the PA is unable to perform the delegated duties safely.

A PA may terminate a collaboration agreement at any time, subject to the requirement that the PA or the person who developed the collaboration agreement with the PA notify MBP within 10 days of the termination. If a PA's collaboration agreement is terminated, the PA may not practice until executing a new collaboration agreement and notifying MBP, as specified. MBP may terminate a collaboration agreement if the PA has a change in license status that results in the PA being unable to legally practice or immediately after the occurrence of certain circumstances (specified below).

If a patient care team physician is no longer able to legally practice medicine, as specified, the collaboration agreement must remain active and valid under the supervision of the remaining listed patient care team physicians. If there are no remaining patient care team physicians, the PA may not practice until the PA executes a new collaboration agreement, notifies MBP, and, if applicable, has MBP approval to perform any advanced duties.

Scope of Practice

“PA” means an individual licensed by MBP to practice as a PA, subject to the limitation that a PA may not practice independently. “Practice as a physician assistant” means the performance of medical acts that are authorized under a license issued by MBP and the PA's collaboration agreement. Subject to specified exceptions and to the extent permitted by MBP rules, regulations, and orders, a PA (in addition to a physician) may delegate duties to unlicensed individuals. Patient services that may be provided by a PA include:

- obtaining comprehensive health histories;
- performing physical examinations;
- evaluating, diagnosing, managing, and providing medical treatment;

- interpreting and evaluating patient data (with specified authorization), for the purpose of determining management and treatment of patients;
- initiating requests for or performing diagnostic procedures (with specified authorization) as indicated by pertinent data;
- exercising prescriptive authority pursuant to the bill (as discussed below);
- informing patients about health promotion and disease prevention;
- providing consultations;
- writing medical orders;
- obtaining informed consent;
- delegating medical acts to licensed or unlicensed personnel (with specified authorization) if the PA has at least 7,000 hours of clinical practice experience; and
- certifying a patient's health or disability as required by a federal, State, or local program.

With specified exceptions, a PA may not perform any medical act (1) for which the individual has not been licensed; (2) that has not been delegated consistent with the collaboration agreement; (3) that is not appropriate to the education, training, and experience of the PA; and (4) that is not customary to the practice of a patient care team physician including in the collaboration agreement.

Advanced Duties

With specified exceptions, a PA may only perform advanced duties after the PA obtains MBP approval of the advanced duty subject to a collaboration agreement. Documentation demonstrating a PA's authority to perform an advanced duty must be maintained in the facility where that advanced duty is being performed.

When MBP approval is required, the Physician Assistant Advisory Committee must review the collaboration agreement and MBP (based on any recommendation of the committee if provided) may modify the performance of advanced duties under a collaboration agreement if the PA does not meet the applicable education, training, and experience requirements to perform the advanced duties. If MBP makes a specified modification, MBP (1) must notify each patient care team physician and the PA in writing of the particular elements of the advanced duty request that caused the modification and (2) may not restrict the submission of an amendment to the advanced duty. Individual members of MBP are not civilly liable for actions regarding the approval, modification, or disapproval of an advanced duty under a collaboration agreement.

A PA may perform advanced duties without MBP approval if the advanced duty will be performed in an "exempt facility" (a hospital, ambulatory surgical facility, federally qualified health center, or other practice setting listed on a hospital delineation of privileges

document) and (1) the PA is supervised by a physician with credentials that have been reviewed by the exempt facility; (2) the PA has credentials that have been reviewed by the exempt facility; and (3) the advanced duty is reviewed and approved by the exempt facility.

Prescriptive Authority

A patient care team physician may delegate prescribing, dispensing, and administering of controlled dangerous substances (CDS) if the collaboration agreement includes (1) the authority of the PA to prescribe, and if applicable, dispense CDS, prescription drugs, or medical devices; (2) an attestation that all prescriptions written will include the PA's name, business address, and business telephone number legibly written or printed; and (3) other specified attestations as applicable under current law for delegation agreements. A patient care team physician who has delegated prescriptive authority to a PA must notify MBP within five business days if the specified physician subsequently restricts or removes the delegated prescriptive authority.

As under current law for a primary supervising physician, a patient care team physician may not delegate the prescribing or dispensing of Schedule I CDS but may delegate the prescribing or dispensing of Schedule II-V CDS if the PA has a valid State CDS registration and a federal Drug Enforcement Agency registration. A patient care team physician may delegate any dispensing duties, including performing the required final check of a prescription.

Disciplinary Actions

If MBP determines that a PA or a patient care team physician is practicing in a manner inconsistent with specified requirements, MBP may on its own initiative or on the recommendation of the Physician Assistant Advisory Committee, demand modification of the practice, withdraw the approval of an advanced duty (regardless of whether the advanced duty requires prior approval), or refer the matter to a disciplinary panel for other disciplinary action.

A disciplinary panel, on the affirmative vote of a majority of the quorum, may reprimand, place on probation, or suspend or revoke the PA's license if a PA (1) performs medical acts in a manner that is not consistent with the collaboration agreement; (2) performs medical acts, which are outside the education, training, and experience of the PA; (3) performs medical acts that are not customary to the practice of the patient care team physicians listed on the collaboration agreement; or (4) practices as a PA without first providing notice of a collaboration agreement to MBP.

A PA who fails to produce a collaboration agreement to MBP on request or fails to comply with collaboration agreement requirements is subject to administrative penalties established in regulation.

Practice during a State of Disaster

In addition to PAs licensed in the State or in any other state (as under current law), an employee of the federal government is authorized to practice as a PA in Maryland during a state of disaster.

Medical Malpractice

The bill explicitly includes a PA in the definition of “health care provider” for the purposes of health care malpractice claims under the Courts and Judicial Proceedings Article.

Uncodified Language

A PA who is authorized to practice under a delegation agreement on October 1, 2024, may continue to practice as a PA under the delegation agreement. The delegation agreement must be treated the same as a collaboration agreement under the bill, until the PA provides notice of a collaboration agreement to MBP.

Current Law:

Licensure Qualifications

To qualify for a license, a PA must have graduated from a PA training program, pass a national certifying exam approved by MBP, and have a bachelor’s degree or its equivalent if the applicant graduated from a PA training program after October 1, 2003.

Delegation Agreements

A PA is not authorized to practice independent of a supervising physician. A PA may only be licensed to practice medical acts after the Physician Assistant Advisory Committee has approved a delegation agreement formed between a supervisory physician and a PA.

A “delegation agreement” means a document that is executed by a primary supervising physician and a PA that contains (1) a description of the qualifications of the primary supervising physician and PA; (2) a description of the settings in which the PA will practice; (3) a description of the continuous physician supervision mechanisms that are reasonable and appropriate to the practice setting; (4) a description of the delegated medical acts that are within the primary or alternate supervising physician’s scope of practice and

require specialized education or training that is consistent with accepted medical practice; (5) an attestation that all medical acts to be delegated to the PA are within the scope of practice of the primary or alternate supervising physician and appropriate to the PA's education, training, and level of competence; (6) an attestation of continuous supervision of the PA by the primary supervising physician through the mechanisms described in the delegation agreement; (7) an attestation by the primary supervising physician of the physician's acceptance of responsibility for any care given by the PA; (8) a description prepared by the primary supervising physician of the process by which the PA's practice is reviewed appropriate to the practice setting and consistent with current standards of acceptable medical practice; and (9) an attestation by the primary supervising physician that the physician will respond in a timely manner when contacted by the PA. In addition, the agreement must include a statement in the following form: "The primary supervising physician and the PA attest that: they will establish a plan for the types of cases that require a physician plan of care or require that the patient initially or periodically be seen by the supervising physician; the patient will be provided access to the supervising physician on request"; and any other information deemed necessary by MBP.

Scope of Practice

Patient services that may be provided by a PA include:

- taking patient histories and reviewing patient records to develop medical status reports;
- performing physical examinations and recording patient data;
- interpreting and evaluating patient data as authorized by the supervising physician to determine management and treatment of patients;
- initiating requests for or performing diagnostic procedures as indicated by pertinent data and authorized by the supervising physician;
- providing instructions and guidance regarding medical care matters to patients;
- assisting the supervising physician in the delivery of services to patients, including recording patient progress notes, issuing diagnostic orders, and transcribing or executing specific orders at the direction of the supervising physician; and
- exercising prescriptive authority under a delegation agreement.

Advanced duties are medical acts that require additional training beyond the basic PA education program required for licensure. PAs must obtain prior approval from MBP before practicing any advanced duty. PAs must submit specific training and education documentation to MBP, including procedure logs, evidence of advanced education and training, and consent forms.

A PA may not practice within the scope of any of the following health occupations: radiography, nuclear medicine technology, nursing, optometry, physical therapy, psychology, radiation therapy, or psychotherapy.

Prescriptive Authority

Prescriptive authority for a PA means the authority delegated by a primary or alternate supervising physician to a PA to prescribe and administer CDS, prescription drugs, medical devices, and the oral, written, or electronic ordering of medications; and to dispense, as specified.

Disciplinary Actions

A licensed PA must keep copies of the license and delegation agreement for inspection at the licensee's primary place of business. A disciplinary panel may impose an administrative penalty of \$100 on licensees who fail to do so.

Hospitals, related institutions, alternative health care systems, and employers of PAs must report to MBP regarding changes in the terms of a PA's employment, with certain exceptions for alcohol- or drug-impaired licensees. If a report is not filed with MBP within 10 days, a disciplinary panel may impose a civil penalty of up to \$1,000, payable to the general fund.

A person may not practice, attempt to practice, or offer to practice as a PA unless licensed to do so. A person may also not perform, attempt to perform, or offer to perform any delegated medical act beyond the scope of the license, and which is consistent with a delegation agreement filed with MBP. A person who violates these prohibitions is guilty of a misdemeanor and subject to a maximum penalty of up to five years imprisonment and/or a fine of up to \$5,000 and must lose licensure as a PA. In addition, a disciplinary panel may impose a civil penalty of up to \$5,000.

A licensed physician who employs or supervises an unlicensed PA, or an institution that employs an unlicensed PA, is subject to a civil penalty of up to \$1,000, imposed by a disciplinary panel and payable to MBP's special fund.

State Fiscal Effect: MBP advises that it has the necessary resources to implement collaboration agreements under the bill. It can leverage its current resources to design and create the collaboration agreement template, reconfigure the board's existing database to include collaboration agreements, and convert any existing delegation agreement data. MBP also advises that special fund revenues decrease by an indeterminate amount due to a loss of fee revenues currently received from delegation agreements. The current fee for submission of delegation agreements, which must be approved by MBP, is \$200. While

the bill requires that a PA notify MBP of an executed collaboration agreement (rather than obtaining approval as under current law for delegation agreements), this analysis assumes that MBP would, at a minimum, have to track the executed collaboration agreements. Moreover, a PA must still obtain approval from MBP before the PA may perform certain advanced duties. Under current law, MBP may set reasonable fees for services rendered in connection with PAs. Therefore, the Department of Legislative Services advises that MBP may impose a fee on the approval of collaboration agreements that contain advanced duties. Thus, special fund revenues for MBP are likely not materially affected.

Furthermore, as MBP is no longer required to approve every collaboration agreement, the board's workload is reduced, and staff resources may instead be redirected to other activities.

Small Business Effect: PAs that practice under a collaboration agreement may perform additional duties due to an expanded scope of practice, including advanced duties, as specified.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 673 and HB 727 of 2023; and SB 808 and HB 961 of 2022.

Designated Cross File: HB 806 (Delegate Kerr, *et al.*) - Health and Government Operations.

Information Source(s): Maryland Department of Health; Department of Legislative Services

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