

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 308

(Senator Conway, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

Health Occupations - Licensure of Physician Assistants

This bill requires physician assistants (PAs) to be licensed rather than certified by the Board of Physicians to practice in the State. The bill removes the requirement for a delegation agreement between a physician and a PA to be approved by the board before a PA may practice under certain circumstances. The bill authorizes the board to enter the workplace of any licensed physician or licensed PA or public premises if necessary to investigate any alleged practice or conduct subject to disciplinary action or respond to a complaint, and prohibits any person from denying or interfering with this entry. Violators are guilty of a misdemeanor and subject to fines. The bill alters the membership of the Physician Assistant Advisory Committee (PAAC) within the board; expands grounds for disciplining PAs to align them with those for physicians and encompass violations of delegation agreements; provides for PAs to work in emergency situations under relaxed documentation requirements for physician supervision; and increases the number of PAs to whom a primary supervising physician may delegate medical acts.

Fiscal Summary

State Effect: Minimal increase in general and special fund revenues beginning in FY 2010 due to the bill's penalty provisions. No effect on expenditures as the board can handle the bill's requirements with existing resources.

Local Effect: None.

Small Business Effect: Potential meaningful for supervising primary physicians who may exercise delegation agreements with up to four, rather than just two PAs.

Analysis

Bill Summary: As an alternative to the licensure requirement to graduate from a board-approved PA training program, the bill authorizes licensure for applicants who passed the PA national certifying exam administered by the National Commission on Certification of Physician Assistants prior to 1986, maintained continuing education and recertification requirements, and have been in continuous practice since passing the exam. Licensed candidates must demonstrate oral and written competency in English.

The bill removes the board's authority to issue temporary certificates to PAs who have not passed the national certifying exam and does not replace it with a corresponding temporary license.

If a delegation agreement does *not* include advanced duties, a PA may practice under the delegation agreement once the board has received a submitted delegation agreement. However, if the board later disapproves the delegation agreement, the PA must immediately stop practicing.

The board must approve a delegation agreement that includes advanced duties unless an advanced duty will be performed in a hospital or ambulatory surgical facility:

- that is accredited by the American Association for Accreditation of Ambulatory Surgical Facilities, the Association for Ambulatory Health Care, or the Joint Commission on Accreditation of Healthcare Organizations, or is certified to participate in the Medicare program;
- where the hospital or facility has reviewed the supervising physician and PA's credentials; and
- advanced duties delegated to the PA are reviewed and approved by a process approved by the health care facility's governing body.

To the extent practicable, the board must approve a delegation agreement or take other action authorized under the bill within 90 days after receiving a delegation agreement. Additionally, a primary physician must obtain the board's approval of a delegation agreement before a PA may administer, monitor, or maintain general anesthesia or neuroaxial anesthesia under the agreement. A PA may also prescribe or dispense starter dosages or drug samples in accordance with a delegation agreement.

The bill makes a terminology change as it relates to delegation agreements in that the physician involved in the agreement must be a primary supervising physician rather than a supervising physician. A primary supervising physician is defined as a physician who has delegated medical acts to one or more physician assistants by completing and

submitting to the board a delegation agreement that meets requirements outlined in the bill. Additionally, the bill alters limitations on the number of PAs to whom a physician may delegate medical acts by permitting a primary supervising physician to delegate medical acts to up to four PAs (instead of two) – except in a hospital, a correctional facility, a detention center, or a public health facility, where no such limits apply.

The bill specifies conditions under which the board may disapprove a delegation agreement and requires the board to notify the physician and the PA of any disapproval. A PA who receives notice of disapproval must immediately stop practicing under the agreement or stop performing the disapproved function.

A licensed PA must produce a valid license and delegation agreement when requested by an existing or potential employer and notify the board of any change of address or name within 60 days. The board may impose an administrative penalty of \$100 on licensees who fail to comply with the notification requirement.

In the event of a primary supervising physician's sudden departure, incapacity, or death, a designated alternative supervising physician may assume the role of the primary supervising physician by submitting a new delegation agreement to the board within 15 days. In addition, the bill provides for PAs to work in emergency situations under relaxed documentation requirements for physician supervision.

The board may impose civil penalties of up to \$100 per credit on licensed PAs who fail to obtain continuing education credits required by the board. The bill also alters the board's disciplinary process as it relates to PAs, authorizes the board to impose a fine instead of or in addition to taking specified disciplinary action, and requires the board to pay any resulting fines to the State general fund.

Hospitals, related institutions, alternative health care systems, and employers of PAs must report to the board 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 the board within 10 days, the board may impose civil fines up to \$1,000, payable to the general fund. The bill also specifies requirements that must be met by a PA, his or her employer, and a drug and alcohol treatment program if a PA enters or considers entering an alcohol or drug treatment program.

A licensed physician who employs or supervises an unlicensed PA, and an institution that employs an unlicensed PA, is subject to a civil penalty of up to \$1,000, payable to the Board of Physicians Fund.

Current Law: The board, which operates through special funds, is responsible for the licensure and discipline of physicians and allied health professionals. Advisory

committees play a large role in the oversight of allied health professionals under the board's jurisdiction. For instance, PAAC is responsible for making recommendations to the board concerning the approval, modification, or disapproval of an application for certification as a PA and delegation agreements as well as regulations governing PAs. PAAC may also report to the board any conduct of a supervising physician or PA that may be cause for disciplinary action and report to the board any alleged unauthorized practice of a PA. The board must consider all the recommendations of PAAC and provide a written explanation of the board's reasons for rejecting or modifying the committee's recommendations. In addition, the board may investigate any alleged unauthorized practice of a PA and investigate any conduct that may be cause for disciplinary action.

PAAC is composed of seven members, all of whom are appointed by the State Board of Physicians: three licensed physicians; three certified PAs; and one consumer. At least one physician must specialize in general surgery or a surgical subspecialty, and at least one must specialize in internal medicine, family practice, or a similar primary care specialty. In addition, two of the physician members must either currently serve as a supervising physician of a PA or have done so previously. PA members are appointed from a list of names submitted by the Maryland Academy of Physician Assistants and the State institutions of higher education with approved PA programs. A physician member of the board must serve as a voting board representative at all meetings of PAAC. The chairperson serves in an advisory capacity to the board as a representative of PAAC.

A PA is not authorized to practice independent of a supervising physician. A PA may only be certified to practice medical acts after PAAC has approved a delegation agreement formed between a supervisory physician and a PA that contains a description of:

- the qualifications of the supervising physician and PA;
- the settings in which the PA will practice;
- the continuous physician supervision mechanisms;
- the delegated medical acts within the supervising physician's scope of practice and required specialized education or training; and
- the process by which the PA's practice is reviewed appropriate to the practice setting and consistent with current standards of acceptable medical practice.

The agreement must also include an attestation:

- that all medical acts delegated to the PA are within the supervising physician's scope of practice and appropriate to the PA's education, training, and competence;

- of continuous supervision of the PA by the supervising physician through the mechanisms described in the delegation agreement;
- that the supervising physician is responsible for any care given by the PA; and
- the physician will respond in a timely manner when contacted by the PA.

Regulations prohibit a physician from delegating duties to a PA that include administering any form of an anesthetic agent or an agent of conscious sedation other than topical anesthetics or small amounts of local anesthetics.

A PA may practice in accordance with a pending delegation agreement if (1) the PA receives a temporary practice letter from the board; (2) the supervising physician has been previously approved to supervise one or more PAs in the proposed practice setting for the same scope of practice; and (3) the PA has been previously approved for the same scope of practice in a different practice setting. A delegation agreement is “pending” if it has been executed and submitted to PAAC for review but PAAC has not made a recommendation to the board or if the board has not made a final decision regarding the delegation agreement.

If PAAC recommends a denial of the pending delegation agreement or the board denies the pending delegation agreement, the PA may no longer practice in accordance with the delegation agreement. Should PAAC make such a recommendation, the physician and PA must be given notice.

To qualify for a certificate, a PA must have graduated from a PA training program, pass a board-approved national certifying exam, and have a bachelor’s degree or its equivalent if he or she graduated from a PA training program after October 1, 2003. The board may issue a temporary certificate to applicants who have met specified requirements but have not yet passed the national certifying exam. A PA may not practice within the scope of any of the following health occupations: nursing, optometry, physical therapy, or psychology.

A certified PA who operates outside of the approved scope of practice, and a individual who operates without a certificate, is guilty of a misdemeanor and subject to fines up to \$5,000 and/or imprisonment for up to five years. The board may also impose civil penalties payable to the Board of Physicians Fund.

Subject to statutory provisions requiring hearings, and the affirmative vote of a majority of a quorum, the State Board of Physicians may reprimand a licensee, place any licensee on probation, or suspend or revoke a license if a licensee is found guilty of any of 40 specified offenses.

Medicare requires that certain providers be certified under the federal Medicare program. The certification is required before a facility may provide services to Medicare beneficiaries and receive payment. The following facilities must seek and obtain certification from the Centers for Medicare and Medicaid Services (CMS):

- home health care agencies;
- skilled nursing facilities;
- hospice providers;
- dialysis centers;
- hospitals;
- portable x-ray suppliers;
- outpatient physical/occupational/speech providers;
- rural health centers;
- comprehensive outpatient rehabilitation facilities;
- ambulatory surgery centers;
- organ procurement organizations;
- community mental health centers; and
- federally qualified health centers.

CMS prohibits payment to be made to any of these facilities if they have failed to gain Medicare certification, except in the case of certain emergency situations.

Background: The board advises that “advanced duties” are functions beyond what is generally included in an education program required for a PA to practice in the State. They are not defined either in statute or regulations.

Additional Information

Prior Introductions: HB 982 of 2009, a similar bill, was withdrawn after a hearing in the House Health and Government Operations Committee.

Cross File: HB 323 (Delegates Morhaim and Hammen+) - Health and Government Operations.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

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