

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1266 (Delegate Carey, *et al.*)
Health and Government Operations

Health Occupations - Treatment of Lyme Disease and Other Tick-Borne Diseases
- Disciplinary Actions

This bill, with specified exceptions, prohibits disciplinary action against a health practitioner licensed under the Health Occupations Article solely because of the practitioner's diagnostic evaluation, testing, or treatment of Lyme disease or another tick-borne disease under specified circumstances.

Fiscal Summary

State Effect: Potential minimal decrease in special fund expenditures. Potential minimal decrease in general fund revenues.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A health practitioner may not be disciplined solely because of the practitioner's diagnostic evaluation, testing, or treatment of Lyme disease or another tick-borne disease if:

- the diagnostic evaluation, testing, or treatment is integrative, complementary, alternative, nontraditional, or nonconventional;
- the health practitioner discloses such information to the patient along with other required disclosures, such as the associated risks and benefits; the U.S. Food and Drug Administration (FDA) status of associated drugs, devices, or biological

products; potential disagreement of such methods within the medical profession; the practitioner's credentials to perform such methods; and options within other medical specialties; and

- documentation of such disclosures and any written consent are included in the patient's medical record.

A health occupations board may discipline a health practitioner who is otherwise exempt from such action under the bill if the board determines that (1) the diagnostic evaluation, testing, or treatment has a significant safety risk greater than the conventional methods and (2) the risk is not outweighed by the potential benefits of the evaluation, testing, or treatment.

The use of a drug, device, biological product, or method that is not FDA-approved may not be a basis for a disciplinary action against a health practitioner who is otherwise exempt from such action under the bill. Such practitioners are also exempt from disciplinary action for violation of recordkeeping, billing, or other regulatory requirements for acts or omissions that arise from professional differences of opinion if the practitioner has acted in good faith to comply with the intent of the requirements.

If a statute authorizes a health occupations board to use a system of peer review in standard of care cases and the board uses a panel of peer reviewers, for purposes of determining whether a licensee or certificate holder has violated the standard of care in the treatment of a patient with Lyme disease or another tick-borne disease, the panel must include at least one reviewer with demonstrated training, competence, and experience in the same methods used by the licensee or certificate holder under review, with specified exceptions.

Current Law: Chapters 450 and 451 of 2016 require a health care provider who draws a patient's blood for a Lyme disease laboratory test or a medical laboratory that performs a Lyme disease test to provide a specified written notice to the patient at the time blood is drawn. The required notice includes disclaimers regarding the accuracy of tests for Lyme disease. A health care provider's or medical laboratory's provision of the required notice may not be the sole basis for a cause of action.

Under the Health Occupations Article, licensed and certified health practitioners are subject to a range of disciplinary action by the appropriate health occupations boards; specific grounds for disciplinary action vary by occupation.

For example, subject to hearing provisions, a disciplinary panel of the State Board of Physicians (MBP), on the affirmative vote of a majority of the quorum of the panel, may reprimand a licensed physician, place a licensed physician on probation, or suspend or revoke a license if a licensed physician violates any 1 of 43 statutory disciplinary grounds, including failure to meet appropriate standards as determined by appropriate peer review

for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State.

Once a complaint is received, MBP staff conduct a preliminary investigation of the complaint, which includes sending a copy of the complaint to the respondent with a request for a response. The results of the preliminary investigation are then presented to the panel, which may decide to close the case with no action, close the case with an advisory letter (informal, nonpublic action), or instruct board staff to conduct a full investigation. During the full investigation, the panel may also refer the case for peer review (through its contracted peer review entity) to solicit additional expertise; cases involving standard of care require two peer reviews. The respondent is sent a copy of the peer review results and may submit a response before the case proceeds through the disciplinary process.

Background: Lyme disease is caused by the bacterium *Borrelia burgdorferi* and is transmitted to humans through the bite of an infected blacklegged tick. Symptoms include fever, headache, fatigue, and a characteristic skin rash called erythema migrans. If left untreated, infection can spread to joints, the heart, and the nervous system. Lyme disease is diagnosed based on symptoms, physical findings, and the possibility of exposure to infected ticks. Most cases of Lyme disease can be treated successfully with a short course of antibiotics. In more complicated cases, Lyme disease can usually be successfully treated with three to four weeks of antibiotic therapy.

The U.S. Centers for Disease Control and Prevention, the National Institute of Allergy and Infectious Diseases, and the National Institutes of Health advise that, for patients who have nonspecific symptoms after being treated for Lyme disease and who have no evidence of active infection (patients with post-treatment Lyme disease syndrome), studies have shown that long-term antibiotic therapy does not necessarily improve outcomes and can be associated with serious complications.

Maryland is a high incidence state for Lyme disease. In 2016, there were 1,274 confirmed cases of Lyme disease (21.2 confirmed cases per 100,000 population), as well as an additional 592 probable cases.

State Fiscal Effect: MBP advises that the bill does not materially affect board finances or operations, as it does not investigate a physician solely based on the physician's diagnostic evaluation, testing, or treatment of Lyme disease or other tick-borne disease. The Department of Legislative Services advises that, to the extent the bill results in fewer or shortened disciplinary proceedings by health occupations boards, special fund expenditures may decrease minimally. General fund revenues may also decrease minimally, to the extent the bill results in the less frequent imposition of disciplinary fines. The bill's requirements relating to peer review can likely be handled with existing resources.

Small Business Effect: The bill explicitly exempts health practitioners who offer specified treatments for Lyme disease or other tick-borne diseases from disciplinary action by health occupations boards under specified circumstances, which may encourage the provision of such treatments and services.

Additional Information

Prior Introductions: None.

Cross File: SB 950 (Senator Eckardt) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of Health; U.S. Centers for Disease Control and Prevention; National Institute of Allergy and Infectious Diseases; National Institutes of Health; Department of Legislative Services

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