

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 722 (Delegate Kerr)
Health and Government Operations

Physician Assistants - Parity With Other Health Care Practitioners (Physician Assistant Parity Act of 2023)

This bill (1) authorizes a physician assistant (PA) to perform numerous additional duties, as specified; (2) requires that health maintenance organization (HMO) quality of care standards must include a requirement that each HMO member have an opportunity to select a PA as a primary care provider from among those available to the HMO (although an HMO is not required to include PAs on its provider panel as primary care providers); (3) adds a PA member to the Statewide Advisory Commission on Immunizations; (4) adds primary care PA services to the definition of “primary care” and requires the Maryland Health Care Commission (MHCC) Primary Care Services Workgroup to include specified PA representatives; and (5) excludes a PA from the definition of “health care practitioner” with respect to health care staffing agencies.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect governmental operations or finances.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law:

Expansion of Authorized Duties

The bill generally authorizes a PA to perform additional duties in specified areas of law, as discussed below.

Correctional Services – Involuntary Placement of Pregnant Inmates in Restrictive Housing: Generally, a pregnant inmate may not be involuntarily placed in restrictive housing (including involuntary medical isolation or infirmary). However, a pregnant inmate who is deemed to need infirmary care must be admitted to the infirmary on the order of a primary care nurse practitioner or obstetrician.

Under the bill, a pregnant inmate must be admitted to the infirmary on the order of a PA.

Guardian of a Disabled Person: On petition and after any notice or hearing, a court may appoint a guardian of the person of a disabled person. A guardian of the person must be appointed if the court determines from clear and convincing evidence that a person lacks sufficient understanding or capacity to make or communicate responsible personal decisions (including provisions for health care, food, clothing, or shelter) because of any mental disability, disease, habitual drunkenness, or addiction to drugs and no less restrictive form of intervention is available that is consistent with the person's welfare and safety.

A petition for guardianship of a disabled person must include signed and verified certificates of competency from the following licensed health care professionals who have each examined or evaluated the disabled person: (1) two physicians; or (2) one physician *and* either one psychologist, one certified social worker-clinical (LCSW-C), or one nurse practitioner. An examination or evaluation by at least one of these health care professionals must occur within 21 days before filing a petition for guardianship of a disabled person.

Under the bill, a PA may sign a certificate of competency with a physician.

Health Care Decisions: Prior to providing, withholding, or withdrawing treatment for which authorization has been obtained or will be sought, the attending physician and a second physician or nurse practitioner, one of whom must have examined the patient within two hours before making the certification, must certify in writing that the patient is incapable of making an informed decision regarding the treatment. The certification must be based on a personal examination of the patient. If a patient is unconscious, or unable to communicate by any means, the certification of a second physician or nurse practitioner is

not required. When authorization is sought for treatment of a mental illness, the second physician or nurse practitioner may not be otherwise currently involved in the treatment of the person assessed.

A health care provider may not withhold or withdraw life-sustaining procedures on the basis of an advance directive where no agent has been appointed or on the basis of the authorization of a surrogate, unless (1) the patient's attending physician and a second physician or nurse practitioner have certified that the patient is in a terminal condition or has an end-stage condition or (2) two physicians, one of whom is a neurologist, neurosurgeon, or other physician who has special expertise in the evaluation of cognitive functioning, certify that the patient is in a persistent vegetative state.

Under the bill, a PA may be the second health care provider to certify that an individual is incapable of making an informed decision regarding treatment. If authorization is sought for treatment of a mental illness, the PA may not be otherwise currently involved in the treatment of the person assessed. A PA may also be one of two health care practitioners who may certify that a patient is in a terminal condition or has an end-stage condition; however, a PA may not certify that a patient is in a persistent vegetative state.

Voluntary Admission of a Minor for the Treatment of a Mental Disorder: A parent or guardian may apply, on behalf of a minor, for the minor's voluntary admission to (1) any facility that is not a State facility; (2) a regional institute for children and adolescents; and (3) the child or adolescent unit of a State facility for the treatment of a mental disorder. A facility may not admit an individual unless:

- the individual has a mental disorder;
- the mental disorder is susceptible to care or treatment;
- the applicant understands the nature of a request for admission; and
- specified health care professionals assent to the admission.

For admission to a child or adolescent unit of a State facility, assent to admission may be given by (1) a physician and a psychologist; (2) two physicians; (3) a physician and a psychiatric nurse practitioner; (4) a physician and an LCSW-C; and (5) a physician and a licensed clinical professional counselor (LCPC).

Under the bill, a PA, in conjunction with a physician, may assent to the voluntary admission of a minor to the child or adolescent unit of a State facility.

Voluntary Admission of a Disabled Person: A disabled person may apply for voluntary admission to a facility for the treatment of a mental disorder if the person submits the required written application and certification that the person has the capacity to execute the

application and understands the criteria for voluntary admission and the procedure for requesting discharge from the facility. Certification may be given by (1) a physician and a psychologist; (2) two physicians; or (3) a physician and a psychiatric nurse practitioner. A certificate for voluntary admission of a disabled person must be in the required form and based on the personal examination of the health care practitioner who signs the certificate. A certificate may not be used for admission if the underlying examination was conducted more than one week before the certificate was signed or if the health care practitioner who signed the certificate has a financial interest in the facility at which admission is sought or is related to the disabled person or the guardian of the person of the disabled person.

Under the bill, a PA, in conjunction with a physician, may certify a disabled person for voluntary admission. The PA must have personally examined the disabled person within one week of signing the certificate.

Involuntary Admission Process: Under the Health-General Article, application for the involuntary admission of an individual to a facility or Veteran's Administration (VA) hospital may be made by any person who has a legitimate interest in the welfare of the individual. An application for involuntary admission for the treatment of a mental disorder must (1) be in writing; (2) be dated; (3) be on the required form; (4) state the relationship of the applicant to the individual for whom admission is sought; (5) be signed by the applicant; (6) be accompanied by the certificates of either a physician and a psychologist, two physicians, a physician and a psychiatric nurse practitioner, a physician and an LCSW-C, or a physician and an LCPC; and (7) contain any other required information.

A certificate for involuntary admission must be based on the personal examination of the health care provider who signs the certificate. The certificate must contain: (1) a diagnosis of a mental disorder of the individual; (2) an opinion that the individual needs inpatient care or treatment; and (3) an opinion that admission to a facility or VA hospital is needed for the protection of the individual or another. A certificate may not be used for admission if the examination was done more than one week before the certificate was signed or more than 30 days before the facility or the VA hospital receives the application for admission or if the health care practitioner who signed the certificate has a financial interest in the facility at which admission is sought or is related to the individual or applicant.

Under the bill, a licensed PA, in conjunction with a physician, may certify an individual for involuntary admission to a facility or a VA hospital.

Emergency Evaluation: An emergency evaluation petition is a legal process that enables the petitioner to have a person who is suffering from mental illness or is in serious mental crisis taken into custody and examined by a medical professional in a designated emergency facility. A petition for an emergency evaluation may be made a peace officer who has personally observed the individual or the individual's behavior. Specified health

care providers may also petition for an emergency evaluation and must give any such petition to a peace officer, including a physician, psychologist, LCSW-C, LCPC, clinical nurse specialist in psychiatric and mental health nursing, psychiatric nurse practitioner, licensed clinical marriage and family therapist, or health officer or designee (who has examined the individual). Any other interested person may also petition for an emergency evaluation and must present any such petition to the court for immediate review.

Under the bill, a PA may petition for an emergency evaluation and must give any such petition to a peace officer.

Emergency and Allergy Treatment Program: The Emergency and Allergy Treatment Program within the Maryland Department of Health (MDH) authorizes a certificate holder or their agent to administer life-saving treatment to individuals who have severe adverse reactions to allergens or insect stings when physician or emergency medical services are not immediately available in a youth camp. A licensed physician or nurse practitioner may prescribe and dispense, and a licensed pharmacist may dispense, auto-injectable epinephrine to a certificate holder. A certificate holder may receive, possess, and store auto-injectable epinephrine. A cause of action may not arise against any physician or nurse practitioner for any act or omission if the physician prescribes or dispenses auto-injectable epinephrine and the necessary paraphernalia for administration of auto-injectable epinephrine, in good faith, to a person certified by MDH under statute.

Under the bill, a PA may prescribe and dispense auto-injectable epinephrine to a certificate holder. A PA is also granted the same immunity from liability as a licensed physician or nurse practitioner.

Dentistry and Dental Hygiene: A facility in which a dental hygienist is authorized to practice under the general supervision of a licensed dentist must ensure that a dental hygienist consult with the supervising dentist or the patient's dentist and the treating physician, registered nurse practitioner, certified nurse midwife, or licensed certified midwife before proceeding with treatment if there is a change in or concerns about a patient's medical condition.

“Clinical office” means an office of a licensed physician, registered nurse practitioner, certified nurse midwife, or licensed certified midwife who provides prenatal, postpartum, or primary care and in which the supervising dentist and dental hygienist communicate with the licensed physician, certified registered nurse practitioner, certified nurse midwife, or licensed certified midwife in providing dental hygiene services to a patient.

Under the bill, a PA, in conjunction with the supervising dentist or patient's dentist may serve as one of the health care providers with which a dental hygienist may consult as

required. The definition of “clinical office” is expanded to include an office of a licensed PA in which the supervising dentist and dental hygienist communicate with the PA.

Maryland Pharmacy Act: Generally, a person must be licensed by the State Board of Pharmacy to practice pharmacy in the State, including dispensing prescription drugs. This requirement does not prohibit a licensed dentist, licensed physician, or licensed podiatrist from (1) dispensing a drug or device sample to a patient, as specified; (2) administering a prescription drug or device in the course of treating a patient; (3) dispensing a starter dosage of a prescription drug or device to a patient, as specified; or (4) dispensing a prescription drug or device in the course of treating a patient at specified facilities.

Under the bill, a licensed PA is added to the list of health care providers who are not prohibited from dispensing or administering prescription drugs or devices, as specified above.

Department of Disabilities Attendant Care Program: The purpose of the Attendant Care Program is to provide financial assistance to eligible individuals for attendant care services. An “eligible individual” is an individual who is between 18 and 65 years of age and has a severe chronic or permanent disability that precludes or significantly impairs the individual’s independent performance of essential activities of daily living, self-care, or mobility. The program must ensure that, at any given time, at least 50% of eligible individuals receiving financial assistance under the program are either gainfully employed, actively seeking employment, or attending an institution of postsecondary or higher education. The remainder of eligible individuals receiving financial assistance under the program must be individuals who (1) reside in a nursing facility or similar institution licensed to provide chronic or intermediate care and will be deinstitutionalized as a result of the program or (2) are certified by an attending physician or certified nurse practitioner as being at risk of placement in a nursing facility or similar institution if attendant care services are not received in the community.

Under the bill, a PA may certify an eligible individual as being at risk of placement in a nursing facility or similar institution.

Extreme Risk Protective Orders: A “petitioner” may seek a court order for an extreme risk protective order that, if ordered, prohibits a respondent, by court order, from purchasing or possessing any firearm or ammunition for the duration of the order. “Petitioner” includes a physician, psychologist, LCSW-C, LCPC, clinical nurse specialist in psychiatric and mental health nursing, psychiatric nurse practitioner, licensed clinical marriage or family therapist, or health officer or designee (who has examined the individual).

Under the bill, the definition of petitioner is expanded to include a PA.

State Employees – Certificates of Illness or Disability: In general, a State employee who uses sick leave for five or more consecutive workdays is prohibited from receiving sick leave pay unless the employee gives the employee’s immediate supervisor an original certificate of illness or disability, which must be signed by a medical doctor, chiropractor, clinical psychologist, dentist, LCSW-C, nurse midwife, nurse practitioner, oral surgeon, optometrist, physical therapist, podiatrist, accredited Christian Science practitioner, or health care provider as defined by the federal Family Medical Leave Act.

Under the bill, a PA may sign an original certificate of illness or disability.

Health Maintenance Organization – Standard of Quality of Care

The Secretary of Health must adopt regulations that set out reasonable standards of quality of care that an HMO must provide to members. The standards must include a requirement that each member have an opportunity to select a primary physician or a certified nurse practitioner from among those available to the HMO. This provision does not require an HMO to include certified nurse practitioners on the HMO’s provider panel as primary care providers.

Under the bill, each HMO member must have the opportunity to select a PA from among those available to the HMO; an HMO is not required to include PAs on its provider panel as primary care providers.

Statewide Advisory Commission on Immunizations

The Statewide Advisory Commission on Immunizations determines where vaccine shortages exist in Maryland and which vaccines are in short supply. The commission also makes recommendations on immunization requirements for children entering school; the elimination of disparities in vaccine distribution; options for the purchasing of vaccines; and plans to increase the availability and affordability of vaccines in the State. The advisory commission currently includes a nurse practitioner, a pharmacist, and several physicians with specified membership or experience.

Under the bill, one PA who is a member of the Maryland Academy of Physician Assistants is added as a term-limited member of the advisory commission.

Maryland Health Care Commission’s Primary Care Services Workgroup

MHCC must issue an annual report that includes an analysis of and recommendations to improve the quality of and access to primary care services. “Primary care” means health care provided in the following outpatient settings: family medicine, general pediatrics, primary care internal medicine, primary care obstetrics and gynecology, primary care nurse

practitioner services, and primary care midwifery. MHCC must form a workgroup to develop the report.

Under the bill, primary care PA services are added to the definition of “primary care” and the workgroup must include representatives of the Maryland Academy of Physician Assistants.

Definition of Health Care Practitioner – Health Care Staffing Agencies

With respect to health care staffing agencies, a “health care practitioner” means any individual licensed or certified under the Health Occupations Article who is a licensed practical nurse, registered nurse, certified nursing assistant, or practices in an allied health care field. “Health care practitioner” does not include (1) an acupuncturist; (2) a dentist; (3) a nurse anesthetist; (4) a nurse midwife; (5) a nurse practitioner; (6) a pharmacist; (7) a physician; or (8) a podiatrist.

Under the bill, a PA to the list of practitioners who are *not* included in this definition of “health care practitioner.”

Small Business Effect: PAs may perform additional specified duties under the bill.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 674 (Senators Carozza and Klausmeier) - Finance.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Public Safety and Correctional Services; Department of Legislative Services

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