

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 727 (Delegate Kerr)
Health and Government Operations

Physician Assistants – Revisions (Physician Assistant Modernization Act of 2023)

This bill requires a physician assistant (PA) to have a “collaboration registration” rather than a delegation agreement and authorizes a PA who has submitted a collaboration registration to the State Board of Physicians (MBP) to practice medical acts that are appropriate to the physician assistant’s education, training, and experience (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 “personally prepare and dispense” prescription drugs, as specified (rather than prescribe and dispense prescription drugs as delegated by a supervising physician under a delegation agreement). The bill also alters the education and examination requirements for licensure, establishes specified immunity for PA’s practicing during a disaster, and makes other conforming changes.

Fiscal Summary

State Effect: MBP can implement the bill within existing budgeted resources. Revenues are likely 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 (rather than having passed the PA national certifying examination administered by the National Commission on Certification of Physician Assistants prior to 1986, maintained all continuing education and recertification requirements, and been in continuous practice since passage of the examination, as under current law).

MBP *may* grant a license to an applicant who does not meet these educational requirements if the applicant has passed the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants.

Collaboration Registrations

The bill repeals provisions relating to delegation agreements. Instead, “collaboration registration” means a document, submitted to MBP, that is developed by and outlines a collaborative relationship between a PA and (1) an individual physician; (2) a group of physicians; or (3) a health care facility or organization that employs, contracts with, or credentials physicians.

A collaboration registration must contain (1) a description of the qualifications of the PA and the person who developed the collaboration registration with the PA; (2) a description of the settings in which the PA will practice (as under current law for a delegation agreement); (3) an attestation by the PA that the PA will consult and collaborate with or refer an individual to an appropriate licensed physician or any other health care provider, as appropriate; and (4) an attestation by the person who developed the collaboration registration with the PA that the person will ensure that a physician responds in a timely manner when contacted by the PA. MBP may not require approval of a collaboration registration.

If a PA who has not been previously licensed, as specified, submits an initial collaboration registration to MBP, that collaboration registration must identify a licensed physician(s) who will consult and collaborate with the PA for at least 18 months after the initial collaboration registration is submitted.

A PA may terminate a collaboration registration at any time, subject to the requirement that the PA or the person who developed the collaboration registration with the PA notify MBP within 30 days of the termination. If a PA's collaboration registration is terminated, the PA may not practice until submitting a new collaboration registration to MBP, as specified.

Scope of Practice

“PA” means an individual who is 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 appropriate to the PA's education, training, and experience and performed by a PA who has submitted a collaboration registration with MBP. Patient services that may be provided by a PA include:

- obtaining comprehensive health histories and performing physical examinations;
- evaluating, diagnosing, managing, and providing medical treatment;
- ordering, performing, and interpreting diagnostic studies and therapeutic procedures;
- exercising prescriptive authority pursuant to the bill (as discussed below);
- informing patients about health promotion and disease prevention;
- providing consultations, writing medical orders, and obtaining informed consent;
- providing services in health care facilities, as specified;
- delegating or assigning therapeutic and diagnostic measures to be performed by licensed or unlicensed personnel and supervising licensed or unlicensed personnel performing therapeutic and diagnostic measures;
- certifying a patient's health or disability as required by a federal, State, or local program; and
- authenticating any document that a physician may authenticate through signature, certification, stamp verification, affidavit, or endorsement.

Additionally, a PA who has the appropriate education, training, and experience to perform x-ray duties may do so without a license, as specified. The bill also repeals the prohibition against a PA practicing within the scope of practice for psychology.

Prescriptive Authority

The bill repeals provisions requiring the delegation of prescribing, dispensing, and administering controlled dangerous substances (CDS), prescription drugs, or medical devices to a PA by a primary or alternate supervising physician under a delegation agreement. Instead, the bill specifies that Title 12 of the Health Occupations Article does not prohibit a PA from “personally preparing and dispensing” a prescription under the Maryland Pharmacy Act when practicing in accordance with the bill. “Personally prepare and dispense” means that a PA (1) is physically present on the premises where a prescription is filled and (2) performs a final check of the prescription before it is provided to the patient.

A PA may prescribe, dispense, order, or administer non-Schedule I CDS, medical devices, and durable medical equipment. A PA may not prescribe or dispense CDS unless the PA has a valid State CDS registration or federal Drug Enforcement Agency registration.

A PA may personally prepare and dispense a starter dosage of any drug that the PA is authorized to prescribe to a patient of the PA or any drug that a PA may prescribe as authorized in the course of treating a patient at a specified location, subject to specified requirements. A PA must (1) comply with specified labeling requirements; (2) record the dispensing on the patient’s chart; (3) allow the Office of Controlled Substances Administration (OCSA) to enter and inspect the PA’s office at all reasonable hours; and (4) with the exception of starter dosages or samples, provide the patient with a written prescription, maintain prescription files, and maintain a separate file for Schedule II CDS prescriptions for at least five years. Any prescription dispensed by a PA must include the PA’s name, business address, and telephone number.

A PA student in a training program accredited by the Accreditation Review Commission on Education for the Physician Assistant is prohibited from exercising prescriptive authority.

Disciplinary Actions

If MBP determines that a PA or a person who developed a collaboration registration with a PA 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 collaboration registration or refer the matter to a disciplinary panel for other disciplinary action.

Unless otherwise prohibited, a PA’s employer must report to MBP any termination of employment related to a quality of care issue to MBP within 14 days of termination (as opposed to five days under current law). A hospital, related institution, alternative health

care system, or employer must report any limitation, reduction, or other change of the terms of employment of a PA or any termination of employment that might be grounds for specified disciplinary action to MBP within 30 days of the action occurring (as opposed to within 10 days as under current law).

If a PA practices as a PA without first submitting a collaboration registration to MBP, 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.

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. A PA who responds during a disaster may not be liable for civil damages for injuries that result from acts or omissions, unless the act was committed negligently.

Uncodified Language

A PA who is authorized to practice under a delegation agreement on October 1, 2023, may continue to practice as a PA under the delegation agreement. The delegation agreement must be treated the same as a collaboration registration under the bill, until an initial collaboration registration is submitted by the PA 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 Revenues: MBP advises that special fund revenues decrease by approximately \$225,000 in fiscal 2024 and \$300,000 annually thereafter due to 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.

However, the bill requires a PA to submit a collaboration registration to MBP. While the bill prohibits MBP from *approving* collaboration registrations, this analysis assumes that

MBP would, at a minimum, have to receive and keep collaboration registrations on file. 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 submission of collaboration registrations equal to that which is currently imposed for delegation agreements. Thus, special fund revenues for MBP are likely not materially affected.

Furthermore, as MBP is no longer required to approve delegation agreements, 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 registration may perform additional duties due to an expanded scope of practice.

Additional Information

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

Designated Cross File: SB 673 (Senators Carozza and Klausmeier) - Finance.

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

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