House
Legislative
Analysis
Section

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

ALLOW DIRECT ACCESS TO PHYSICAL THERAPY

House Bill 5014 as passed by the House
Second Analysis (11-18-02)

Sponsor: Rep. Barb Vander Veen
Committee: Health Policy

THE APPARENT PROBLEM:

One of the prominent debates in contemporary health care concerns the role of the physician with respect to other health care providers. Generally speaking, physicians receive the most extensive education and training of all health care providers. Because of their background, many people believe that a person who is experiencing pain, discomfort, or other signs of a possible medical condition is best advised to make an appointment with his or her physician before consulting another type of health care provider. At the same time, the health care landscape is undergoing significant changes. Lack of health insurance has long been a concern for some and is increasingly becoming a significant issue for the general public. Also, many people have begun to think of their physicians as advisors whose input should be taken into account alongside that of other providers who are either within the traditional health care framework or outside of it. Someone who believes that she understands the nature of her problem may wish to go directly to a non-physician health care provider, such as a physical therapist, without first having to see her physician who (she may believe) will probably just go ahead and refer her to the other provider anyway. For such a patient, the conception of the physician as the guarantor of the patient's well-being may seem paternalistic and burdensome, especially if the patient lacks health insurance and must pay for health care expenses out of her pocket.

In Michigan, physical therapists are licensed health professionals, like physicians, dentists, and podiatrists. The state health code allows physical therapists to evaluate, educate, and consult with any patient but prohibits them from actually treating a patient unless the patient has first obtained a prescription from a physician, dentist, or podiatrist. According to representatives of the Michigan Physical Therapy Association, the prescription requirement hinders patients' access to quality, affordable care. They also argue that the requirement limits patients' choice of health care providers. Legislation has been introduced to allow physical therapists to treat patients without a prescription from an M.D., D.O., dentist, or podiatrist.

THE CONTENT OF THE BILL:

House Bill 5014 would amend of the Public Health Code (MCL 333.16263 et al.) to allow a licensed physical therapist to treat a patient without a prescription from another licensed health professional. The bill would also increase the education and continuing education requirements for physical therapists, add ethics and standards of practice requirements, create a "Physical Therapy Professional Fund", and add a definition of "physical therapist assistant" to the code (without requiring that a physical therapist assistant be licensed or registered). A more detailed summary of the bill's changes is provided below.

Direct access to physical therapy. The bill would retain the code's requirement that persons engaged in the practice of physical therapy be licensed or otherwise authorized. However, the bill would eliminate the requirement that persons who engage in the actual treatment of individuals act only upon the prescription of an individual holding a license issued elsewhere in the code—i.e., under the code's provisions concerning dentistry, (allopathic) medicine, osteopathic medicine, and podiatric medicine—or an individual holding an equivalent license issued by another state.

If a physical therapist had reasonable cause to believe that a patient had symptoms or conditions requiring services beyond the scope of practice of physical therapy, he or she would have to refer the patient to an appropriate health care practitioner. If a patient did not show reasonable response to physical therapy treatment in a time period consistent with standards of practice established by the Department of Consumer and Industry Services (CIS), the physical therapist would have to consult with an appropriate health care practitioner. (See below for more on the standards of practice.)

Practice of physical therapy. The bill would amend the code's definition of "practice of physical therapy" to mean the evaluation of, education of, consultation with, or treatment of an individual by *or under the direction and responsibility of a physical therapist* using certain means and for certain purposes. (Currently, the code does not address the issue of whether persons acting under the direction and responsibility of a physical therapist are engaged in the practice of physical therapy.) The definition of "practice of physical therapy" would also be revised to include the interpretation and labeling of test and measurement results as well as intervention selection, in addition to services currently specified. Finally, the code's definition of physical therapy would be amended to specify that physical therapy does not include the establishment of medical diagnoses or the prescribing of *medical* treatment. Currently, the definition explicitly excludes "the identification of underlying medical problems or etiologies", and the bill would eliminate this exclusion from the practice of physical therapy.

Physical therapy education/continuing education. Effective December 31, 2009, an individual seeking a license to engage in the practice of physical therapy would have to hold a doctoral level degree from a nationally accredited physical therapy program. However, all individuals who held a physical therapy license from Michigan or another state on December 31, 2009 would be granted grandfather status and would not be required to hold a doctoral level degree.

The state board of physical therapy would require a licensee seeking renewal of a physical therapy license to furnish the board with satisfactory evidence that he or she had attended at least 40 hours of continuing education courses or programs during the previous two years. This requirement would take effect two years after the bill's effective date. The courses or programs would have to be approved by the board, treat subjects related to the practice of physical therapy, and be designed to further educate licensees. CIS, in consultation with the board, would have to promulgate rules requiring each applicant to complete an appropriate number of hours or courses in pain and symptom management as part of the continuing education requirement.

Physical Therapy Professional Fund. The bill would establish the Physical Therapy Professional Fund within the state treasury. The treasurer would be required to credit ten percent of each annual license fee collected to the fund, and the fee would be increased from $50 to $60. (The bill would also eliminate "temporary licenses.") The fund could be expended only for the establishment and operation of a physical therapy continuing education program. The treasurer would be responsible for directing the fund and would credit any interest and earnings from the investment to the fund. The fund could receive gifts, devises, and other money as provided by law, and the unencumbered balance in the fund at the close of the fiscal year would remain in the fund instead of reverting to the general fund.

Physical therapists' standards of ethics and practice. CIS, in consultation with the board, would be required to promulgate rules to establish standards of ethics and standards of practice for physical therapists. CIS would have to incorporate by reference into the rules, the standards of ethics, standards of practice, and supervision guidelines contained in the document entitled "Guide to Physical Therapy Practice", Second Edition, Published by the American Physical Therapy Association, Alexandria, Virginia, January 2001. Physical therapists would have to adhere to the standards of ethics, standards of practice, and supervision guidelines established in CIS's rules.

Insurance/reimbursement. The bill would add a provision stating that Part 178 of the code—i.e., the part of the code being amended—does not require or preclude third party reimbursement for services provided under the part of the code. Nor would Part 178 preclude a health maintenance organization, a health care benefit plan, a nonprofit health care corporation, a worker's disability compensation insurer, or the state's Medicaid program from requiring a member or enrollee to fulfill benefit requirements for physical therapy services, including prescription, referral, and preapproval.

Use of titles. The health code restricts the use of certain words, titles, and letters and combinations of letters to persons authorized to use those terms. The bill would add the following terms to the list of restricted terms: Doctor of Physiotherapy, Doctor of Physical Therapy, physiotherapy, physical therapist assistant, physical therapy assistant, physiotherapist assistant, physiotherapy assistant, P.T. assistant, C.P.T., D.P.T., M.P.T., P.T.A., registered P.T.A., licensed P.T.A., certified P.T.A., C.P.T.A., L.P.T.A., R.P.T.A., and P.T.T.

"Physical therapist assistant". The bill would add a definition of "physical therapist assistant" (PTA) to the code without adding any requirement that a PTA be licensed or registered. "Physical therapist assistant" would be defined as an individual who assists a physical therapist in physical therapy

intervention and is a graduate of a nationally accredited physical therapist assistant education program.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill's continuing education requirements and the increased license fee provisions would increase state costs and state revenues by similar amounts. The Department of Consumer and Industry Services' Bureau of Health Services indicates that about 6,500 people were licensed as physical therapists during fiscal year 2000-2001, which suggests that the $10 annual fee increase would generate (on average) around $65,000 in new revenue annually. Around $25,000 of this revenue would go to the Health Professional Regulatory Fund, and the remaining $40,000 would be deposited in the new Physical Therapy Professional Fund as a result of the ten percent contribution provided for in the bill. The PTPF revenues would likely offset any increased costs related to the establishment and operation of the new continuing education requirements imposed in the bill. (11-12-02)

ARGUMENTS:

For:

According to the American Physical Therapy Association, consumers may obtain treatment from a physical therapist without a physician's referral in 35 states, including Nebraska where consumers have had "direct access" to physical therapy services since 1957. In Michigan, however, a patient must obtain a prescription from a physician, osteopath, dentist, or podiatrist before being treated by a physical therapist. A physical therapist may already consult with a patient and develop a proposed course of treatment without a prescription, but he or she must send the patient to a physician or other specified professional before actually pursuing that course of treatment. Even a patient who has received a medical diagnosis from a physician and decides to consult with a physical therapist on his or her own must return to his or her physician to obtain a prescription specifically for physical therapy services. Depending on a doctor's schedule, this may mean a delay in treatment of a few days, weeks, or even months. Lengthy delays are hardly in the patient's best interest since early intervention generally prevents conditions from worsening and allows patients to resume work and other daily activities sooner. Moreover, generally speaking, a patient who is seen sooner rather than later will generally need fewer services. Eliminating the need for a doctor's prescription and reducing the number of physical therapy appointments would therefore help contain costs to insurers and patients alike. In addition to the patient's well-being and health care costs, the health care community also needs to respond to consumers' heightened focus on their right to choose their health care providers, in general, and in their increased interest in alternative health care providers, in particular. These issues are especially important in the case of the uninsured, who have to pay for their health care out of their own pockets and who ought, therefore, to have unfettered rights to see the health care providers of their choice.

Doctors have opposed the bill largely on the basis of anecdotes and speculation about errors in judgment that physical therapists have made in the past or might make in the future. While physical therapists do make mistakes, doctors make mistakes as well. More to the point, personal trainers, athletic trainers and massage therapists—who are, on the whole, significantly less qualified than physical therapists to recognize signs of a serious medical condition—make mistakes, yet anyone can see them without a prescription. Physical therapists undergo extensive education and training and are capable of determining when a patient's condition requires another professional's attention, and the bill would clearly state that the establishment of medical diagnoses and the prescribing of medical treatment lie outside of physical therapists' scope of practice. Letters from government officials from Idaho, Rhode Island, North Carolina, South Carolina, Colorado, and Maryland corroborate supporters' claim that providing consumers with direct access to the full range of physical therapy services will not result in an appreciable increase in either the number of complaints or the severity of complaints and will not present any risk to public health.

The bill's continuing education requirements and ethics and standards of care guidelines provide additional assurance that physical therapists would remain focused on their patient's well-being, treating them where appropriate and recommending that they seek medical help when a condition outside of their scope of practice was indicated. And physical therapists have agreed to an increased license fee to pay for the establishment and operation of a physical therapy continuing education program. More importantly, the bill's requirement that all physical therapists seeking licensure on or after December 31, 2009 hold a doctoral degree in physical therapy would ensure that patients are in good hands when they go to physical therapists.

Finally, physical therapists argue that they are currently liable for failing to refer patients who need medical attention on to physicians, and they are willing to accept the liability that comes with being initial health care providers. The bill would also specifically state both that it would not require third party reimbursement for physical therapy services and that insurers could require members and enrollees to fulfill benefit requirements for the services.

Response:

Some people believe that the bill should require the physical therapist to refer the patient to a physician or other appropriate medical professional after a certain period of time—e.g., 30, 60, or 90 days—if the patient is still undergoing physical therapy treatment. This would provide additional assurance that a patient who may have a serious, systemic medical condition will receive the attention he or she needs if his or her physical therapist misunderstands the nature of his or her problem.

Regarding the requirement that physical therapists seeking initial licensure on or after December 31, 2009 be doctors of physical therapy, the American Physical Therapy Association's "vision sentence" for physical therapy states: "By 2020, physical therapy will be provided by physical therapists who are doctors of physical therapy, recognized by consumers and other health care professionals as practitioners of choice to whom consumers have direct access for the diagnosis of, interventions for, and prevention of, impairments, functional limitations, and disabilities related to movement, function, and health." A significant step in this direction was taken on January 1, 2002 when the Commission on Accreditation of Physical Therapy Education (CAPTE) withdrew accreditation from all physical therapy programs culminating in a baccalaureate degree. Currently, 65 of the 200 programs accredited by CAPTE are doctoral programs and 85 others are seeking to make the transition within the next five years. While the state and the national physical therapy associations are moving in this direction, representatives contend that the 2010 deadline will not give some of the state's physical therapy programs enough time to complete their transition.

Reply:

As passed by the House, the bill would explicitly require a physical therapist to refer a patient on to a physician if the physical therapist believes that the patient's symptoms or conditions indicate a need for medical attention or if the patient does not respond to physical therapy in a time frame established by CIS.

Against:

Representatives of the state's physician community believe that the patient's well-being is best promoted and protected when the physician serves as a gatekeeper to patients' access to other health care professionals. While physical therapists tout their educational background and credentials, their training clearly falls short of the training that medical students receive in medical school. Distinguishing muscular-skeletal problems from serious, systemic medical conditions, such as cardio-vascular problems, is no easy task, and the state's duty to protect residents' health, safety, and welfare should lead the state to err on the side of caution. Allowing physical therapists to evaluate and begin treating patients without consulting a physician would increase the risks that serious problems would not be detected before they caused real harm. No one questions whether physical therapists are qualified to treat conditions that have been definitively identified as muscular-skeletal in nature. The concern is that by allowing physical therapists to treat such conditions before a physician has ruled out less obvious causes of muscular-skeletal ailments puts the patient's life at risk. While physical therapists have agreed to take more continuing education courses, such courses will hardly bridge the wide gulf between physicians and physical therapists. Some people believe that continuing education courses do very little to enhance or ensure quality and that such requirements provide a false sense of security. Also, while the bill would require those who obtain their initial licenses after 2009 to have doctoral degrees in physical therapy, a physical therapy doctoral degree is not a medical degree.

Many physicians are also concerned about what they regard as the bill's widening of physical therapists' scope of practice. The bill would explicitly define the practice of physical therapy to include intervention selection and the interpretation and labeling of test results. Also, while current law specifically excludes the "identification of underlying medical problems or etiologies" from the practice of physical therapy, the bill would not. Physical therapists have argued that because they routinely perform all of these tasks anyway, the bill would not expand their scope of practice beyond what they already do on a daily basis. But what physical therapists actually do is beside the point. The bill establishes a dangerous precedent by widening health care professionals' scope of practice to include activities that they are legally prohibited from conducting just because they do those things anyway. Regardless of whether physical therapists currently do interpret test results or identify underlying medical problems, the bill would authorize physical therapists

to engage in activities currently restricted to physicians and other health professionals with medical training.

Supporters of the bill cite the experience of other states as evidence that fears about patients' well-being are unfounded, but reports about what happens in other states are largely based on complaints received by state health departments. Such reports say nothing about patients who have medical conditions that are missed by physical therapists but do not, for whatever reason, complain to the state. Supporters also suggest that providing direct access to physical therapists will create more choices for health care consumers, and they argue that the rise of alternative medicine is evidence of consumers' demand for more say in the treatment process. Other significant trends include the increase in contact among health care professionals, who are now expected to consult with one another in ways that they were not in the past, and the positioning of the physician at the center of this network. Having a physician leading a team of providers ensures a high-quality, comprehensive approach to patients' well-being. Cutting physicians out of the loop bucks that trend, and puts patients at risk.

Some people are also concerned about the effect that opening access to physical therapy services will have on health care costs. Although the bill would not require insurers to cover physical therapy services not under a physician's referral, a delay in proper treatment of a serious medical condition generally leads to an increase in health care costs once proper treatment is sought and provided. An increase in health care costs generally leads to an increase in the cost of insurance, especially in states where the percentage of persons who are insured is relatively high, like Michigan. An increase in the cost of health insurance could lead businesses to provide less insurance to employees, and thus the bill could inadvertently result in a decreased rate of insured persons and decreased levels of coverage to those who are insured.

POSITIONS:

The Michigan Physical Therapy Association supports the bill, but would prefer that the licensure requirement to hold a doctoral degree in physical therapy not take effect until 2019. (11-25-02)

The Department of Consumer and Industry Services supports the concept of allowing direct access to physical therapists but does not support the bill's proposed increase in continuing education requirements. (11-25-02)

The Michigan State Medical Society opposes the bill. (11-25-02)

The Michigan Orthopaedic Society opposes the bill. (11-26-02)

The Michigan Osteopathic Association opposes the bill. (11-26-02)

The Michigan Chiropractic Society opposes the bill. (11-27-02)

Analyst: J. Caver

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.