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BILL ANALYSIS



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Senate Bill 1167 (Substitute S-2 as reported from Committee)
Sponsor: Senator Bruce Patterson
Committee: Health Policy

(as passed by the Senate)

Date Completed: 7-15-08

RATIONALE

Michigan is one of only four states that do not regulate physical therapist assistants (PTAs), and is the only state that does not define them, according to the Federation of State Boards of Physical Therapy. Federation data also show that, of the 46 states that regulate PTAs, 38 require them to be licensed. In Michigan, the Public Health Code provides for the licensure of physical therapists, but does not address PTAs. This absence of regulation is considered problematic for several reasons. Although employers may require PTAs to have a degree from an accredited program, and Medicare regulations contain this requirement, there is nothing in State law to prevent anyone from calling himself or herself a PTA and providing physical therapy services to consumers in Michigan. Also, recent changes to Medicare rules will require PTA graduates to complete a national exam beginning in January 2010. Since this State does not require licensure, students graduating from a PTA program in Michigan will have to take the exam in another state. In addition, some employers that provide personnel to facilities in multiple states require licensure of all PTAs hired in Michigan, and these individuals must go out of State to obtain a license. It also has been pointed out that, without State regulation of PTAs, there is no effective way to disseminate information to these practitioners.

To address these concerns, many people believe that Michigan should require the licensure of physical therapist assistants, as well as provide for the continuing professional development of both PTAs and physical therapists.

CONTENT

The bill would amend Part 163 (General Provisions) and Part 178 (Physical Therapy) of the Public Health Code to provide for the licensure of physical therapist assistants, and make other changes regarding physical therapists and PTAs. The bill would do the following:

- **Specify that practice as a physical therapist assistant would be a health profession subfield of the practice of physical therapy.**
- **Require the Board of Physical Therapy to establish standards regarding the qualifications of PTAs.**
- **Prescribe examination requirements for PTAs.**
- **Establish the responsibilities of a physical therapist supervising a PTA, and allow the delegation of services.**
- **Require the Department of Community Health (DCH), by rule, to establish professional development requirements for physical therapists and PTAs.**
- **Require the DCH, by rule, to establish standards of ethics, practice, and supervision for the practice of physical therapy.**
- **Increase the annual license fee for physical therapists from \$50 to \$90, and extend the fee to PTAs.**
- **Create the "Physical Therapist Professional Fund" and dedicate 10% of annual license fee revenue to it.**
- **Require the Board of Physical Therapy to determine whether an applicant met the requirements for licensure under Part 178.**

-- Add a PTA to the Board and reduce the public members by one.

Practice as Physical Therapist Assistant

The bill specifies that practice as a physical therapist assistant would be a health profession subfield of the practice of physical therapy. "Physical therapist assistant" would mean an individual with a health profession subfield license under Part 178 who assists a physical therapist in physical therapy intervention. "Practice as physical therapist assistant" would mean the practice of physical therapy performed under the supervision of a licensed physical therapist.

An applicant for licensure as a physical therapist assistant would have to meet the requirements of Section 16174 and at least one of the following requirements:

- Be a graduate of a program for the training of physical therapist assistants approved by the Board.
- If educated outside of the United States or trained in the U.S. military, be a graduate of an education process that was determined through a credentials evaluation process approved by the American Physical Therapy Association or other Board-approved national accreditation agency to be at least comparable to PTA entry level education in the U.S.
- Be a licensed, certified, registered, approved, or other legally recognized PTA in another state with qualifications substantially equivalent to those established by the Board.

(Section 16174 requires an individual who is licensed or registered under Article 15 (health occupations) to be 18 years of age or older; be of good moral character; have a specific education or experience in the health profession or health profession subfield or health profession specialty field of the health profession, or equivalent training, or both, necessary to promote safe and competent practice and informed consumer choice; have a working knowledge of the English language; pay the appropriate fees; establish that disciplinary proceedings before a similar licensure or certification board are not pending; establish that no sanctions are in force at the time of application; file a consent to the release of information regarding a disciplinary

investigation; and submit fingerprints for a criminal history check.)

To determine whether an applicant for initial licensure as a physical therapist assistant had the appropriate level of skill and knowledge required by Part 178, the Board would have to require the applicant to submit to an examination that included those subjects the general knowledge of which was commonly and generally required of a graduate of an accredited PTA education program in the United States. The Board could waive this requirement for an applicant who had graduated from a Board-approved program for the training of physical therapist assistants by January 1, 2008. The Board also could waive the exam for an applicant who was licensed, certified, registered, approved, or otherwise legally recognized as a PTA in another state, when the Board determined that the other state had qualifications, including completion of a national or state approved exam, that were substantially equivalent to those established by Part 178.

The Board would have to determine the nature of an examination and could include the use and acceptance of national exams where appropriate. The Board could not allow the use of exams or the requirements for successful completion to result in discriminatory treatment of applicants.

The Board would have to provide for the recognition of the certification or experience consistent with Part 178 acquired by physical therapist assistants in other states who wished to practice in Michigan.

The Board could cause an investigation to be begun when necessary to determine the qualifications of an applicant for licensure. An applicant could be required to furnish additional documentation or information when the Board determined that it was necessary to evaluate the applicant's qualifications.

The Board would have to establish the standards and decisions regarding the qualifications of physical therapist assistants to determine that each PTA had the necessary knowledge and skill to perform in a safe and competent manner with due regard to the complexity and risks attendant to activities that could be delegated by a physical therapist to an assistant.

A physical therapist assistant would have to apply for licensure or renewal of licensure on a form provided by the DCH.

The Board could relicense a physical therapist assistant who had failed to renew a license if the PTA showed that he or she met the current requirements for licensure under Part 178 and rules promulgated under it. In relicensing an individual, the Board could establish standards for training, education, or experience equivalent to current educational and practice requirements. An interim license could be issued pending the results of action taken under these provisions.

The Board would have to grant interim licensure to an unlicensed individual who was a graduate of a PTA education program accredited by the Commission on Accreditation in physical therapy education and who was employed as a physical therapist assistant on the bill's effective date. An interim license would be effective until the Board formally issued or denied a license to the PTA. Until rules were promulgated under Part 178, the Board also could grant interim licensure to a new applicant who had graduated from a PTA education program accredited by the Commission after the bill's effective date.

A licensed physical therapist assistant would have to display publicly the current certificate of licensure or renewal permanently in his or her place of practice, if feasible, and would have to have his or her pocket card available for inspection. While working, the individual would have to communicate verbally to the patient that he or she was a physical therapy assistant, and wear appropriate identification, clearly indicating that he or she was a PTA.

A physical therapist assistant would be the agent of the supervising physical therapist or group of physical therapists. A communication made to a PTA that would be a privileged communication if made to the supervising physical therapist would be a privileged communication to the PTA and the supervising therapist to the same extent as if it were made to the supervising therapist.

A physical therapist assistant would have to conform to minimal standards of acceptable and prevailing practice for the supervising physical therapist.

Supervisory Responsibilities

A physical therapist who supervised a physical therapist assistant would be responsible for all of the following:

- Verifying the PTA's credentials.
- Evaluating the PTA's performance.
- Monitoring the PTA's practice and provision of physical therapy services.

Subject to the standards of practice, ethics, and supervision, a physical therapist who supervised a physical therapist assistant could delegate to the assistant the performance of physical therapy services for a patient who was under the case management responsibility of the physical therapist, if the delegation were consistent with the PTA's training. A physical therapist would be responsible for the clinical supervision of each PTA to whom the therapist delegated the performance of physical therapy services under these provisions.

A physical therapist who supervised a physical therapist assistant would have to keep on file in the therapist's office or in the health facility or agency or correctional facility in which the therapist supervised the PTA, a permanent, written record that included the therapist's name and license number and the name and license number of each PTA he or she supervised.

A physical therapist could not supervise more than four physical therapy assistants. If a physical therapist supervised PTAs at more than one practice site, the physical therapist could not supervise more than two PTAs by a method other than the physical therapist's actual physical presence at the site.

A group of physical therapists practicing other than as sole practitioners could designate one or more physical therapists in the group to fulfill the responsibilities regarding delegation and record-keeping.

Notwithstanding any law or rule to the contrary, a physical therapist would not be required to countersign documentation written in a patient's clinical record by a PTA to whom the therapist had delegated the performance of physical therapy services for a patient.

The Board could prohibit a physical therapist from supervising one or more physical therapist assistants for any of the grounds set forth in Section 16221 or for failure to supervise a PTA as required in Part 178 and rules promulgated under it. (Section 16221 requires a health profession disciplinary subcommittee to proceed with administrative sanctions if it finds that grounds listed in that section exist.)

Professional Development

In consultation with the Board of Physical Therapy, the DCH would have to promulgate rules establishing professional development requirements for physical therapists and physical therapist assistants, as well as rules to require licensees seeking renewal to furnish evidence acceptable to the DCH and the Board of the successful completion, during the proceeding license term, of the requirements. Beginning the license year after the rules' effective date, an individual would have to meet the professional development requirements.

Also, in consultation with the Board, the DCH would have to promulgate rules establishing professional development requirements in subjects related to identifying signs and symptoms of systemic disease, in order to ensure compliance with a requirement that a physical therapist refer a patient back to a health care professional if symptoms or conditions required services beyond the scope of practice of physical therapy (as described below).

The Physical Therapy Professional Fund would be established in the State Treasury. Of the money attributable to per-year license fees collected from individuals licensed or seeking licensure as a physical therapist or physical therapist assistant, the State Treasurer would have to credit 10% of each individual annual license fee to the Fund. The money in the Fund could be spent only for the establishment and operation of a physical therapy professional development program based on requirements under the bill.

The State Treasurer would have to direct the investment of the Fund and credit to it interest and earnings from investment. The Fund could receive gifts and devises and other money as provided by law. The unencumbered balance in the Fund at the

close of the fiscal year would remain in the Fund and not revert to the General Fund. The DCH would be the administrator of the Fund for auditing purposes.

Standards of Practice

In consultation with the Board, the DCH would have to promulgate rules establishing standards of practice, standards of ethics, and standards of supervision for the practice of physical therapy. A physical therapist would be required to adhere to those standards.

A physical therapist would have to refer a patient back to the health care professional who issued the prescription for treatment if the therapist had reasonable cause to believe that there were symptoms or conditions requiring services beyond the scope of practice of physical therapy.

To the extent that a particular physical therapy service required extensive professional training, education, or ability, or posed serious risks to the health and safety of patients, the Board could prohibit or otherwise restrict the delegation of that physical therapy service or could require higher levels of supervision. A physical therapist could not delegate ultimate responsibility for the quality of physical therapy services, even if the services were provided by a physical therapist assistant.

A physical therapist would have to consult with the health care professional who issued the prescription for treatment if a patient did not show reasonable response to treatment in a time period consistent with the standards of practice established in the rules.

Renewal

If an applicant met the requirements for renewal as set forth in Part 178 or rules promulgated under it, the Board would have to issue a renewal license. If the Board determined that an applicant had not met the requirements for renewal, the applicant would have to be given written notice of the reasons for denial and would have the right to a hearing.

Certificate of Licensure or Renewal

The DCH would be required to issue a certificate of licensure or renewal to an applicant who was granted licensure or renewal. A certificate would have to contain the full name of the individual licensed, a permanent individual number, and the date of expiration. The DCH also would have to issue to licensees under Part 178 a pocket card containing the essential information of the license.

Program Investigation; Register

The Board could conduct or cause to be conducted investigations and evaluations necessary to determine whether a program met the criteria established by Part 178 and rules promulgated under it.

At times the Board determined appropriate, it could review the criteria for the education and training of graduates to determine whether they met the requirements for practice and use of the title physical therapist assistant in Michigan.

The Board would have to keep a register of programs meeting the criteria it established. The register would have to include the full title of the program, the institution of which it was a part, and its address. A copy of the register or the information contained in it would have to be available for public inspection.

Other Provisions

The Board of Physical Therapy consists of five physical therapists and three public members. The bill would add one physical therapist assistant and reduce the public members to two.

Part 178 lists words, titles, and letters whose use is restricted to those individuals authorized to use them. The bill would add the following to this list: physical therapist assistant, physical therapy assistant, physiotherapist assistant, physiotherapy assistant, p.t. assistant, c.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., and r.p.t.a.

The bill provides that Part 178 would not apply to a student in training to become a physical therapist or physical therapist

assistant while performing duties assigned as part of the training.

Part 178 states that it does not prohibit a hospital, as a condition of employment or the granting of staff privileges, from requiring a physical therapist to practice in the hospital only upon the prescription of a licensed dentist, physician, or podiatrist. Under the bill, this would apply to a physical therapist assistant, as well as a physical therapist.

The bill specifies that Part 178 would not require new or additional third party reimbursement or mandated workers' compensation benefits for physical therapy services, and would not preclude a third payer from requiring a member or enrollee to fulfill benefit requirements for physical therapy services, including prescription, referral, or preapproval when services were rendered by an individual licensed or otherwise authorized under Article 15.

MCL 333.16315 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Physical therapists and PTAs treat individuals of all ages who have medical problems or other health-related conditions that limit their abilities to move and perform functional activities in their daily lives. Physical therapists examine individuals and develop treatment plans to promote the ability to move, reduce pain, restore function, and prevent disability. They also work with individuals to prevent the loss of mobility by developing fitness- and wellness-oriented programs. Physical therapist assistants implement the treatment plans under the direction and supervision of a physical therapist. According to the American Physical Therapy Association, the minimum educational requirement for physical therapists is a postbaccalaureate degree from an accredited educational program; while some schools offer a master's degree, a growing majority offer a doctor of physical therapy degree. Physical therapist assistants must graduate with an associate degree from an accredited PTA program.

As noted above, of the 46 other states that regulate PTAs, 38 require them to be licensed. All states, other than Michigan, define "physical therapist assistant". There is nothing in Michigan statute or administrative rules that addresses the provision of physical therapy services by PTAs or even recognizes the existence of these health care professionals. Under the Public Health Code, a licensed physical therapist may delegate functions to a licensed or unlicensed individual who is otherwise qualified by education, training, and experience. If tasks are delegated to an unqualified assistant, however, or if a physical therapist fails to supervise a PTA, any professional disciplinary sanctions will affect the physical therapist only.

Because Michigan does not regulate PTAs, there is nothing to stop anyone from calling himself or herself a PTA and performing physical therapy services—subject only to criteria imposed by employers or third-party payers, including Medicare. This means that individuals who have lost or been unable to obtain their license in other states can practice in Michigan. Foreign-trained physical therapists who have not met all of their licensing requirements also can work as PTAs in this State. In addition, there are reports of individuals without a degree signing and billing for services as PTAs.

While the majority of PTAs practicing in Michigan are no doubt competent and ethical, those who have not been adequately trained or are not properly supervised can inadvertently jeopardize their clients' safety. Students in PTA programs learn how to use machinery such as ultrasonic deep heat as well as various forms of electrical stimulation, and they learn when not to provide or continue particular interventions. For example, if ultrasound is performed over an undiagnosed mass that is cancerous, the ultrasound could speed the growth of the cancer. Without the appropriate training, individuals performing physical therapy services can inflict actual injury.

By making practice as a PTA a subfield of the practice of physical therapy, requiring the licensure of PTAs, defining their scope of practice, and providing for their supervision, the bill would protect consumers as well as enhance the professionalism of the field.

Supporting Argument

The licensure of physical therapist assistants would help keep these practitioners in Michigan. As mentioned above, new Medicare regulations will require PTAs to pass a national exam beginning in January 2010. Since graduates can take the exam only in conjunction with an application for licensure, they will have to do so in another state unless Michigan enacts a licensing requirement. Also, some Michigan PTAs must be licensed as a condition of employment with firms that supply personnel to out-of-State facilities. When someone must leave the State in order to obtain a license, or even take an exam, there is the possibility that he or she will choose not to return.

Supporting Argument

By requiring PTAs to be licensed, the bill would help ensure that health facilities, employers, and PTAs received payment from third-party payers, in addition to Medicare. When policies are set by third-party payers, they sometimes include wording that assumes that all states regulate PTAs. An insurance company, for example, might have a policy of reimbursing only for treatment provided by "licensed individuals". This can create a hardship for PTAs and employers where licensure is not available.

Supporting Argument

Under the bill, both physical therapists and PTAs would have to meet not only entry-level criteria but also professional development requirements. The bill would require the DCH, in consultation with the Board, to promulgate rules establishing these requirements, as well as a requirement that licensees furnish evidence of successful completion in order to renew their license. The bill also would create the Physical Therapy Development Fund, allocate 10% of license fees to it, and require money in the Fund to support a physical therapy professional development program. These requirements would help ensure that physical therapy practitioners stayed up to date with advances in their field and remained competent throughout their careers.

Opposing Argument

Government regulation of PTAs is unnecessary absent a clear threat to the public's health or a significant potential to improve quality through regulation. By

limiting entry into the profession, licensure could restrict the pool of workers, leading to an increase in health care costs, as well as a decrease in the efficiency and flexibility in health delivery systems. The PTA profession already is subject to national standards.

Response: Rather than creating a new regulatory scheme, the bill would enhance what already is in place, which includes an existing board within the DCH. Just as practice as a physician's assistant is a health profession subfield of the practice of medicine, practice as a PTA would be a subfield of the practice of physical therapy.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would require the State to incur costs associated with the establishment of the Physical Therapy Professional Fund and an increased administrative burden due to expanded licensure regulations. These costs, however, would likely be offset by the increase in annual license fees for physical therapists and physical therapy assistants. The bill proposes raising the annual licensure fee from \$50 to \$90. According to the DCH, the Michigan Board of Physical Therapy currently oversees approximately 9,000 physical therapists and an indeterminate number of physical therapy assistants. This suggests that the State could increase revenue by at least \$360,000 per year if the annual license fee were increased as proposed.

Fiscal Analyst: Matthew Grabowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.