

SFA

BILL ANALYSIS

RECEIVED

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

NOV 19 1987

Mich. State Law Library

House Bill 4337 (as reported with amendments)**Sponsor:** Representative William Browne**House Committee:** Public Health**Senate Committee:** Health Policy**Date Completed:** 10-19-87**RATIONALE**

The Public Health Code gives State health care regulatory boards the power to take disciplinary action against licensed health practitioners on a number of grounds, such as physical or mental inability "to practice in a safe and competent manner", various criminal convictions, unethical business practices, and lack of good moral character. In a recent case involving a physician convicted of Medicaid fraud, however, the ruling of the Board of Medicine was overturned on the ground that that offense did not affect the physician's ability to practice in a safe and competent manner. (See BACKGROUND for a more detailed discussion of the case.)

As a result of this case, some people, including the Department of Licensing and Regulation, have expressed the belief that health practitioner regulatory boards should be able to proceed against practitioners convicted of criminal fraud in obtaining other practice-related fees, in addition to the boards' current ability to take action in cases of fraud in obtaining third party reimbursement.

Furthermore, hospitals and health maintenance organizations (HMOs) now are required under the Code to notify all appropriate regulatory boards of disciplinary action taken by the hospital or HMO that results in a change of employment status or privileges of practice of a physician or dentist. It has been argued that the type of disciplinary actions required to be reported should be limited to those that affect the practice of a health profession and should not include such actions as parking tickets, which now have to be reported.

CONTENT

The bill would amend the Public Health Code to:

- Add conviction of a misdemeanor or felony involving fraud in obtaining or attempting to obtain fees related to the practice of a health profession, as one of the personal disqualifications under which State health regulatory boards may take disciplinary action against health practitioners. That action could include limiting, suspending, revoking, or denying a license or imposing probation, restitution, or a fine.
- Permit a certified copy of the court record to be considered conclusive evidence of the conviction.
- Limit the disciplinary actions of a hospital or HMO against a physician or dentist that must be reported to the appropriate regulatory boards, to those actions related to the practice of a health profession.

MCL 333.16221 et al.

SENATE COMMITTEE ACTION

The Senate Committee on Health Policy amended the bill to narrow the range of disciplinary actions against a physician or dentist that a hospital or health maintenance organization has taken and is required to report to the appropriate health regulatory board, to those actions related to the practice of a health profession.

BACKGROUND

In 1983, a Detroit physician was charged with 24 counts of filing false Medicaid claims and one count of conspiracy to defraud. After he had been convicted in 1984 of Medicaid fraud in Ingham County Circuit Court, the Attorney General's office brought administrative charges and filed a complaint with the Board of Medicine. The complaint charged that the physician had violated the section of the Public Health Code that dealt with "conviction of a misdemeanor or felony reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner" (MCL 333.16221b(v)). After a hearing, the administrative law judge ruled that the physician had violated this section of the Code, and the board ordered the physician's license to be suspended for one year.

The physician appealed the board's order to Wayne County Circuit Court, arguing that his conviction on Medicaid fraud did not affect his ability to practice medicine in a "safe and competent manner". That Court agreed with the physician and overturned the suspension of the license. In the Court's opinion, the physician had been charged under the wrong section of the Code. The Court felt the physician should have been charged under the section that deals with "fraud or deceit in obtaining or attempting to obtain third party reimbursement" (MCL 333.16221(iii)).

FISCAL IMPACT

The provisions of the bill would result in an indeterminate impact on the State General Fund. Whether the bill would have a positive or negative impact and the magnitude of the impact would depend on the number of violations; the level of enforcement; the number and size of fines assessed; and the offsetting cost of enforcement.

ARGUMENTS**Supporting Argument**

The holding of the Wayne County Circuit Court that convictions involving fraud do not affect the licensee's ability to practice in a safe and competent manner

H.B. 4337 (10-19-87)

ultimately will have the effect of severely limiting the number of administrative complaints filed against licensed health practitioners who have been convicted of crimes involving practice-related frauds. While it could be argued that conviction of criminal fraud, in and of itself, does not affect a practitioner's technical ability to practice his or her profession in a "safe and competent manner", clearly someone convicted of criminal fraud should be disciplined. The bill would give clear statutory authority to sanction health care professionals who have been convicted of a criminal misdemeanor or felony involving fraud in obtaining or attempting to obtain fees related to their practice.

Supporting Argument

The current interpretation by the Wayne County Circuit Court will force the Bureau of Health Services, in the Department of Licensing and Regulation, and the Attorney General's office to bring additional cases against health practitioners who have been convicted of practice-related fraud in order to impose sanctions against them. Thus, the State must show that fraud was committed by investigating the case, calling witnesses, and obtaining records. This lengthens the investigation and results in the administrative hearing taking more time. Under the bill, the Bureau of Health Services would be able to proceed with a certified copy of the court record of conviction to be substituted for the re-creation of the proof of fraud, eliminating the need to duplicate the work of the criminal investigators. These agencies already are over-burdened with cases to be investigated, and they do not need the additional workload. Besides, the ability to introduce the conviction document could encourage some licensees to admit their offense rather than seek a full hearing in which they hoped to overturn some of the proofs entered in court. This would help to clear space on hearing dockets for other cases, and permit investigators to devote time to other charges of fraud, rather than re-doing the work already done by others.

Supporting Argument

Currently, hospitals and health maintenance organizations are required under the Public Health Code to notify the appropriate regulatory board of disciplinary actions taken against a physician or dentist. This can include sanctions from those dealing with patient care to a whole raft of violations, such as parking violations, that have no effect on the delivery and standard of care. While these boards should be notified of disciplinary actions taken as the result of improper patient care, there is no need for notification of disciplinary actions taken on more "technical" matters. The bill would narrow the range of sanctions to be reported and concentrate on those that affect the care of patients.

Legislative Analyst: L. Arasim

Fiscal Analyst: P. Graham

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.