

Legislative Analysis



REGISTER ACUPUNCTURISTS

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Senate Bill 351 (Substitute H-1)

Sponsor: Sen. Bev Hammerstrom

House Committee: Health Policy

Senate Committee: Health Policy

First Analysis (11-9-05)

BRIEF SUMMARY: The bill would prohibit a person from using the titles relating to acupuncture unless registered under provisions of the Public Health Code.

FISCAL IMPACT: The development and administration of a regulatory framework for acupuncturist registration would result in costs to the state, but registration and initial application fees may offset those costs. See a more detailed analysis of the fiscal impact below.

THE APPARENT PROBLEM:

Michigan is one of only a handful of states that does not regulate the practice of acupuncture. Acupuncture is a centuries old method for the prevention or correction of disease, injury, pain, or other conditions. Most individuals are familiar with the traditional Chinese approach to acupuncture which uses thin needles made of metal to stimulate pathways in the body called "meridians."

Since acupuncture is not regulated by the state, anyone can in theory claim to be an acupuncturist and treat others for a fee, whether or not that individual had received training in acupuncture or followed standard procedures in performing acupuncture. Done properly by trained professionals, acupuncture can be beneficial; if done incorrectly, acupuncture can result in serious complications such as infections and punctured lungs or other organs. In addition, blood-borne diseases, such as HIV and hepatitis B and C, can be transmitted by improperly sterilized equipment or by a provider using single-use needles more than once.

Some people believe that in order to increase the public safety, Michigan should join the 42 other states that regulate the practice of acupuncture. Under a system of registration, a person seeking services from a registered acupuncturist would at least know that the individual had completed a minimum level of education and met certain competency standards.

THE CONTENT OF THE BILL:

The bill would create Part 165 within the Public Health Code (MCL 333.16131 et al) to regulate the practice of acupuncture. "Acupuncture" would be defined as the insertion and manipulation of needles through the surface of the human body at specific locations

on the human body for the prevention or correction of disease, injury, pain, or other condition. An "acupuncturist" would be an individual who practiced acupuncture and was registered, or otherwise authorized, under the bill.

The bill would prohibit the use of certain titles relating to acupuncture unless a person was registered under Part 165. The bill's provisions would not apply to a licensed physician (M.D. or D.O.) or to an individual certified by the National Acupuncture Detoxification Association (NADA).

The Michigan Board of Acupuncture would be created within the Department of Community Health (DCH) and would consist of eight voting members who would serve four-year terms. Composition of the board would consist of four acupuncturists, three physicians, and two members of the public.

The DCH, in consultation with the board, would have to promulgate rules establishing the minimum standards for registration. The professional standards issued by a certified program recognized by the National Commission for Certifying Agencies or by a nationally recognized trade association could be adopted by reference. The DCH would be prohibited from developing rules that diminish competition or exceed the minimum level of regulation necessary to protect the public.

There would be a \$75 application fee and a \$200 annual registration fee. Further, the bill would specify that it would not require new or additional third-party reimbursement or mandated worker's compensation benefits for services by an individual registered as an acupuncturist under Part 165. The bill would take effect July 1, 2006.

HOUSE COMMITTEE ACTION:

The House committee substitute increased the representation by the public on the Michigan Board of Acupuncture from one member to two, increased the annual registration fee from \$150 to \$200, and changed the effective date from January 1, 2006 to July 1, 2006.

BACKGROUND INFORMATION:

The bill is virtually identical to House Bill 5205 of 2004. House Bill 5205 was passed by both the House of Representatives and the Senate and was ordered enrolled, but was subsequently pocket vetoed. Usually, the governor has 14 days after being presented with a bill to sign it, veto it, or do neither; after the 14 days, a bill that has not been vetoed becomes law. However, if the legislature adjourns sine die (as it does at the end of the legislative session) before the 14-day time period is up, the bill is said to be "pocket vetoed" and will not take effect.

FISCAL INFORMATION:

Senate Bill 351 (H-1), as reported out by the House Committee on Health Policy, will create state costs to develop and administer the registration, regulation, complaint review, and to support a state board for the registration of the profession of acupuncturist. Annual registration fees of \$200 and initial processing fees of \$75 per individual are established with the intent that they will fully support the state registration system costs for this profession. The costs and revenue are dependent upon the number of persons who seek State of Michigan registration. The Michigan Association of Acupuncture and Oriental Medicine estimates that there are about 100 - 200 acupuncturists in Michigan who will meet the licensing requirements of the bill. Average annual registration revenue from 100 persons would be approximately \$20,000-23,000. Persons will be subject to discipline under Part 161 of the Public Health Code for acupuncturist registration violations or unlawful practice without registration, which may include fines.

ARGUMENTS:

For:

As acupuncture gains in popularity as a complement to conventional medicine, it is imperative that a regulatory structure that ensures a minimum level of education, training, and competency be established to protect the public. When performed by a trained practitioner, acupuncture has been shown to reduce pain, provide relief from symptoms of many disease conditions, alleviate depression, and aid in smoking cessation. However, acupuncture performed by an untrained or incompetent practitioner can lead to infections, punctured organs, and transmission of blood-borne diseases such as HIV and hepatitis B and C. And it does happen. In summer of 2004, Canadian officials had to close down an Ontario acupuncture practice because unscrupulous and under-trained practitioners had used contaminated needles on the public. According to information provided by industry members, the Ontario Health Department had to call former clients in to be tested for HIV and AIDS. In just one day, over 1,500 people were called in for testing.

For:

Currently, 42 states regulate the practice of acupuncture; Michigan is one of the few states that do not. The bill would establish a registration system that would prohibit a person from using certain titles related to acupuncture unless registered. A patient who then sought out a registered acupuncturist would know that the practitioner had completed a minimum level of education and training considered to meet current professional standards. For example, in order to be certified by the National Certification Commission for Acupuncture and Oriental Medicine, an applicant must be trained in Oriental medicine, study human anatomy, and pass an examination in acupuncture. Since many physicians refer patients for acupuncture, registration will ensure that patients are referred only to credentialed and properly trained individuals. However, an M.D. or D.O. would not have to be registered in order to perform acupuncture.

The registration fees established in the bill is expected to pay for the registration program and therefore should not place a burden on the Department of Community Health.

Though the DCH is charged with promulgating rules to set forth the minimum registration standards, the bill's provisions would allow the department to adopt by reference the professional standards recognized by national certifying agencies. And, though some view licensure or registration bills as an impediment to competition and an attempt by "insiders" to keep "outsiders" out; however, the bill specifies that departmental rules could not diminish competition or exceed the level of regulation needed to protect the public from incompetent or untrained individuals.

For:

Substance abuse plays a critical role in the cycle of crime; the majority of crimes committed involve alcohol or the illegal use of controlled substances and an addiction increases the likelihood a person will reoffend. Some studies have shown that auricular acupuncture, which involves placement of acupuncture needles in the outer ear, can be a beneficial component of programs to treat addictions. Individuals certified by the National Acupuncture Detoxification Association (NADA) utilize a five-point ear acupuncture for chemical dependency treatment and not the "full-service" acupuncture provided by other practitioners. Once training is completed and a certificate issued, a NADA Acupuncture Detoxification Specialist agrees to practice only within the limits of his or her training. Many NADA specialists are social workers and substance abuse counselors who work in social service agencies treating individuals with drug and alcohol dependencies. Other practitioners include probation and corrections officers, psychologists, and medical professionals. Ingham County's Community Corrections Advisory Board has instituted a substance abuse treatment program for offenders using acupuncture as part of its treatment plan. By exempting NADA specialists from having to meet the full educational requirements required by the bill, the strides in treating chemical addictions provided by Acupuncture Detoxification Specialists would not be jeopardized.

POSITIONS:

The Michigan Association of Acupuncture and Oriental Medicine supports the bill. (11-8-05)

The Ingham County Prosecutor testified in support of the bill. (11-8-05)

A representative of the Michigan Osteopathic Association indicated support for the bill. (11-8-05)

The Michigan Department of Community Health is neutral on the bill. (11-8-05)

A representative of the Michigan State Medical Society indicated opposition to the bill. (11-8-05)

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■ 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.