

Department of Legislative Services
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FISCAL AND POLICY NOTE

House Bill 979 (Delegate Pena-Melnyk, *et al.*)
Health and Government Operations

State Board of Chiropractic and Massage Therapy Examiners and State Board of Physical Therapy Examiners - Dry Needling - Registration Requirements

This bill prohibits a licensed chiropractor with the right to practice physical therapy or a licensed physical therapist to perform dry needling unless the licensee has been registered by the State Board of Chiropractic and Massage Therapy Examiners or the State Board of Physical Therapy Examiners, respectively. In collaboration with the State Acupuncture Board, the two boards must develop regulations establishing education and clinical experience requirements for registration to perform dry needling.

Fiscal Summary

State Effect: Potential increase in special fund revenues for the State Board of Chiropractic and Massage Therapy Examiners and the State Board of Physical Therapy Examiners to the extent that the boards require registration fees, as authorized under the bill. The boards can promulgate the required regulations with existing budgeted resources.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Dry needling” means the insertion of one or more solid needles into the skin for a therapeutic purpose without injecting or withdrawing any fluids. “Dry needling” does not include insertion of at least one solid needle into the skin for purposes of detoxification, smoking cessation, stress relief. Further, for licensed chiropractors, it does not include any other purpose that is not within the scope of practice of a licensed chiropractor with the right to practice physical therapy. For licensed physical therapists, it

does not include any other purpose that is not within the scope of practice of a licensed physical therapist.

The required regulations must be at least as stringent as the requirements for physicians to practice acupuncture and they must require successful completion of courses offered at a higher education institution accredited by an accrediting organization recognized by the boards in regulations and approved by the Maryland Higher Education Commission.

The State Board of Chiropractic and Massage Therapy Examiners must register a licensed chiropractor with the right to practice physical therapy to perform dry needling if the chiropractor submits an application, evidence of completion of the education and clinical experience requirements as determined by regulations, and pays the registration fee set by the board. The State Board of Physical Therapy Examiners must register a licensed physical therapist to perform dry needling if the licensed physical therapist submits an application, evidence of completion of the education and clinical experience requirements as determined by regulations, and pays the registration fee set by the board.

Current Law/Background: Physicians must be registered by the State Board of Physicians in order to perform acupuncture. To qualify for registration, physicians must (1) complete at least 200 hours of training in a program of study in acupuncture (including required examinations), or complete a board-approved course of study which includes at least 200 hours of instruction in general and basic aspects of acupuncture, specific uses and techniques of acupuncture, and indications and contraindications of acupuncture administration; (2) have the ability to communicate in the English language; (3) pay all application and registration fees; and (4) meet any other reasonable conditions determined by the board.

Dry needling involves the insertion of acupuncture needles into the skin at a myofascial trigger point associated with a hypersensitive palpable module in a taut band for a therapeutic effect – usually relief of pain. Dry needling does not involve injecting or withdrawing any fluids. “Acupuncture” is defined in statute as a form of health care, based on a theory of energetic physiology, that describes the interrelationship of the body organs or functions with an associated point or combination of points. “Practice acupuncture” means the use of oriental medical therapies for the purpose of normalizing energetic physiological functions including pain control, and for the promotion, maintenance, and restoration of health.

In 1989, the State Board of Physical Therapy Examiners opined that dry needling was within the scope of practice of physical therapy, and physical therapists began performing the procedure in Maryland. On August 17, 2010, the State Attorney General responded to a request from the State Acupuncture Board for an opinion concerning whether (1) the insertion of acupuncture needles into a patient falls within the definition of practice of

physical therapy and (2) it is appropriate for the State Board of Physical Therapy Examiners to include it within the scope of practice of physical therapy without legislation. The opinion concluded that (1) the use of acupuncture needles for therapeutic purposes is not reserved exclusively to licensed acupuncturists and (2) the State Board of Physical Therapy Examiners could determine that the use of acupuncture needles as a mechanical device for purposes of dry needling is within the scope of practice of physical therapy by adopting regulations in accordance with the Administrative Procedure Act.

The State Board of Physical Therapy Examiners established a Dry Needling task force to discuss a framework for the regulations and formed a committee of the board to meet with stakeholders. In 2012, the board drafted regulations based on the work of the task force and committee and issued a call for public comment through which over 950 comments were received. The board addressed many issues raised in the comments and submitted proposed regulations in September 2014. The proposed regulations reflect changes made at the request of the Secretary of Health and Mental Hygiene concerning adequacy of training, a transition plan, and oversight. The proposed regulations require 80 total hours of education, training specific to dry needling, and an assessment of competency. These regulations are currently on hold, and the State Board of Physical Therapy Examiners advises that it plans to resubmit the regulations with modifications.

Licensed chiropractors with the right to practice physical therapy may use dry needling, within the scope of chiropractic practice and according to guidelines established by the State Board of Physical Therapy Examiners. Chiropractors without the right to practice physical therapy are prohibited from using dry needling.

The State Board of Physical Therapy Examiners advises that 236 physical therapists practice dry needling, and that approximately 85% of licensed chiropractors are certified to practice physical therapy. The board notes that physical therapists have had the authority to practice dry needling in the State since 1989, and since that time, the board has received two complaints related to the provision of dry needling by physical therapists.

Small Business Effect: According to the State Board of Physical Therapy Examiners, many of the physical therapists who practice dry needling are small businesses. Thus, any impacts under the bill likely affect more than 100 small businesses in the State.

Under the bill, in order to practice dry needling, both physical therapists and chiropractors who are authorized to practice physical therapy must complete educational and clinical experience requirements that are at least as stringent as the requirements for physicians to practice acupuncture. According to the State Board of Physical Therapy Examiners, no such courses for dry needling exist.

Thus, to the extent that physical therapy and chiropractic small businesses that practice dry needling are unable to obtain the required educational experience the bill may prohibit them from practicing dry needling. Nevertheless, to the extent that practitioners are able to complete courses that fulfill the bill's requirements, the educational experience required under the bill is more stringent than the boards currently require, so costs to complete the required educational and clinical experience increase. Additionally, the bill authorizes both boards to set registration fees for dry needling. Thus, costs to practice dry needling rise to the extent that either board implements a required registration fee, as authorized, and these costs are passed on to the small businesses.

Additional Information

Prior Introductions: None.

Cross File: SB 580 (Senator Pugh) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Higher Education Commission, Department of Health and Mental Hygiene, Office of the Attorney General, Department of Legislative Services

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