

PUBLICATION

Health Care Legislation - Maryland 2015 Session [Ober|Kaler]

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The Turf Fights

SB 580 and HB 979: Dry Needling: *FAILED*

Turf war between acupuncture and physical therapists and chiropractors. Proposed to classify dry needling as acupuncture and prohibit physical therapists and chiropractors from continuing to provide dry needling, until each of these boards adopted regulations satisfactory to the Acupuncture Board, including a minimum of 200 hours of specialized training from an approved institution of higher education. Proposal likely would violate federal antitrust law. See, *North Carolina State Board of Dental Examiners v. Federal Trade Commission*.

HB 999 / Chap. 468: Nurse Practitioner Full Practice Authority:

Eliminated the requirement to have a collaboration agreement with a physician to which nurse practitioner was required to attest to the Board. Nurse practitioners no longer view themselves as subordinates and over time have convinced the legislature to first eliminate consulting arrangements and this year repeal formal collaboration arrangements with any particular physician. New nurse practitioners will still need to identify a nurse mentor for the first 18 months of practice.

HB 9 / Chap. 393: Direct-Entry Midwives Act:

Establishes the practice of Direct-Entry (D-E) Midwifery in the Board of Nursing. The Board will have licensure regulations by December, 2016. Qualifications include: a high school diploma or equivalent; certification as a Certified Professional Midwife by the North American Registry of Midwives; and completion of a program approved by the Midwifery Education and Accreditation Council.

Scope of practice is to provide care and advice to a patient during a low-risk pregnancy, labor, delivery, and postpartum period and limited newborn care. D-E Midwives may administer various medications. At delivery must be assisted by a second individual with skill and equipment to perform resuscitation.

D-Es must obtain and comply with an informed consent that includes informing the patient regarding: (1) the licensed direct-entry midwife's training and experience; (2) instructions for obtaining a copy of the regulations adopted by the Board of Nursing; (3) instructions for obtaining a copy of NARM certification requirements; (4) notice of whether the licensed direct-entry midwife has professional liability insurance coverage; (5) instructions for filing a complaint with the Board of Nursing; and (6) a description of the procedures, benefits, and risks of home births.

HB 69 / Chap. 5: Amending Sterile Compounding Restrictions:

Maryland physicians may now, again, mix, blend and prepare the drugs they prescribe to their patients. The Board of Pharmacy relinquishes control over physicians providing this service to their patients.

SB 18: State Board of Dental Examiners - Dentists and Dental Hygienists - Grounds for Discipline: FAILED

Proposed legislation would have added a number of additional grounds for discipline of dentists and dental hygienists. Some were "modernizing" of the Dentistry Act - intoxication, patient abuse, and would make the provisions more consistent with the Medical Practice Act. Others were far-reaching – explicit fee-splitting prohibition, a duty to prevent other dentists from violating the Dentistry Act, and would be substantial changes.

Curing Conflicting Regulation: A Modest Effort

HB 208 / Chap. 229: Trade Name Pre-approval:

Amended Chiropractic title to repeal requirement that chiropractors receive prior Board approval to adopt or register a trade name. Now consistent with all other Boards. Eliminated problem between first use and federal and state registration and first to obtain board approval and related penalties for failing to obtain approval for a quirky and little honored provision. False and misleading prohibition remains, but can be applied in context.

HB 327 / Chap. 240: Ambulatory Surgical Facility – Definitions:

This is the first of a couple of new laws that makes Maryland's patriarchal system of regulating health care facilities more consistent with Medicare's requirements for those facilities.

This law amended the definition of a freestanding ambulatory surgical facility to be more consistent with Medicare requirements. According to the previous statute, a Maryland freestanding ambulatory surgical facility could provide care to any patient that did not require an overnight stay. The new law allows care to any patient that does not require a 24 hour stay and incorporates the standards of a Medicare ambulatory surgical center.

SB 596 / Chap. 41: Surveys, Inspections and External Review:

This second law standardizes how often the Office of Health Care Quality will survey a facility. Freestanding ambulatory care facilities (every 6 years), home health agencies (every 3 years) and nursing homes (annually) will be surveyed less often. Birthing centers will continue to be surveyed annually. HMOs that are accredited are exempt from external review.

A Few Words About Fees

HB 230 / Chap. 79: Health Insurance:

Assignment of Benefits, Reimbursement of Nonpreferred Providers – Repeal of Termination Date:

Out of network providers are allowed under current law to receive an assignment of benefits from patients and get paid by the third party payor under a statutory reimbursement amount. This provision would have self-terminated in 2015.

HB 1092 and SB 118: Workers' Compensation Commission – Regulation of Fees and Charges *FAILED*

Proposal would allow the Commission to set fees for medical exams that cannot vary based on whether the employer or claimant / injured worker sought the exam.

Power to the People: Access to State Records

SB 695 or Chap. 135 and HB 755 / Chap 275: Public Information Act Amendments:

Modest effort at improving access to public records. Requested information useful in disputes or disagreements with state agencies related to regulations, inspections, license applications and defense. Amends General Provisions Article, Title 4.

- Establishes a 5 member PIA-CB:
 - Duties relate to resolving disputes over costs charged.
 - Greater authority amended out of bill.
 - Will make recommendations on needed improvements.
- Establishes a Public Access Ombudsman:
 - Appointed by Attorney General, 4 year term.
 - Duties relate to resolving disputes over:
 - Claims of exemption, redaction, timely and complete response, overly broad requests and fee waiver per 4-206 (poor and/or in the public interest).
 - Ombudsman cannot compel compliance.
- Improves access:
 - Emphasizes access to be immediate, but not more than 30 days and notice required if more than 10 days.
 - Denial requires identification of the record withheld and the statutory basis.
 - If a complaint filed with Ombudsman, then agency must demonstrate that denial "is clearly applicable" and if denied under Part IV (discretionary list) harm from disclosure is "greater than the public interest in access."
- Appeal to Circuit Court:
 - Provides for statutory and actual damages.

SB 444 / 350: Custodians to Have a List of Immediately Available Documents:

Each official custodian shall designate those public records of the governmental unit that are to be made available to any applicant immediately on request.

HB 674 / Chap. 286: State Agencies To Identify a Responsible Individual for PIA Records:

Each agency shall identify and post contact information regarding who shall be responsible for PIA requests. The Attorney General shall be provided these names and list them in the Attorney General manual and website

SB 449 / Chap. 34: Board of Physicians, Criminal Background Checks:

As a condition of an initial or a renewal license, all Board licensees must now submit a criminal background check report from the Criminal Justice Information System. If the report shows a conviction the Board must consider a specified list of factors in determining whether to issue a license. Nine health occupations boards currently require this report; all but two upon initial application only. Note: A substantial number of doctors will find themselves practicing with an expired license.

Miscellaneous: Some Significant, and Some Interesting

HB 415: McKenna's Law, Prohibition on manufacture of cedar hope chests: *FAILED*

Proposed legislation would have banned the manufacture and sale of cedar hope chests without interior door opening mechanisms. Sometimes industry self-regulation is good enough.

HB216 / Chap 409: Prohibition on manufacture of products containing plastic microbeads: *ENROLLED*

This legislation allows the Department of the Environment to adopt regulations to phase out the use of plastic microbeads that are used in products like facial cleansers and cosmetic abrasion skin creams. When you add in concerns about the Chesapeake Bay, self-regulation is not good enough.

HB 499: Licensing Hair Braiders, Cosmetology Assistants and Microdermabrasion - State Board of Cosmetologists: *FAILED*

This proposed legislation would have allowed a type of "super" cosmetologist or esthetician to provide microdermabrasion services- the use of abrasive crystals to remove the dead layers of the skin.

HB 422: Reports to Board of Physicians on Athletic Trainers and Physician Assistants: *FAILED*

Proposed legislation would require hospitals, related institutions and alternative health systems to report disciplinary decisions that may be grounds for discipline regarding athletic trainers and physician assistants.

SB 676 and HB 1021: Death with Dignity:

Wait a while; this has been amended to summer study

SB 374 / Chap. 165: False Claims Act:

Applies to all false claims, not just healthcare. Mandated by federal law, now mirrors the federal FCA. Allows relators to maintain suit even if Attorney General declines to intervene. Changes knowledge definition. Imposes minimum civil penalties.

HB 687: Proposed to repeal religious exemption to Immunization *FAILED* Insurance for Disciplinary Actions *FAILED* HB 244 / Chap. 313: Second Chance Law:

Permits Shielding Criminal Records of First Offense Misdemeanors. Could be a model for providing healthcare professionals the right to shield or expunge single and minor disciplinary actions.

New Frontiers in Medicine Marijuana

Twenty other states now have a similar law.

2011 Legislation:

HB 291 or SB 308: Medical Marijuana:

In 2011 California and 15 states allowed it. Maryland previously allowed "need" in mitigation of criminal charges. Under this legislation need becomes an affirmative defense. Must prove a physician relationship and

treatment need: pain, nausea, spasms or anything else. No public use and not more than 1 oz. Board of Physicians can't discipline doctor who provides evidence patient may receive therapeutic relief. Creates a Work Group to determine and report medical conditions to be treated; informed consent; sources of marijuana, "advice on quality and experience to be expected" grants to facilitate affordability.

2013 Legislation, Chap. 403:

Created the Medical Marijuana Commission. Authorized teaching hospitals to implement a program of distribution and treatment. But, no hospital acted to implement such a program.

2014 Legislation:

SB 923 and HB 881 or Chap. 256 and 240, Acts of 2014:

Chap. 256 allowed "certified doctors" to recommend (not prescribe) marijuana use and licensed growers and dispensaries to fill/provide marijuana on these recommendations. Physicians provide their recommendations for each patient to the Commission which issues identification cards to patients. The physician must identify the basis for the recommendation and provide an ongoing plan of care. Physician and spouse not permitted to have or accept gratuities from or have an interest in a grower or dispenser. Qualified patients can possess a 30 day supply, but cannot grow their own. Commission also will license up to 15 growers to plant, harvest and distribute certified marijuana. There is no limit on separately licensed dispensaries. Hospitals do not report privilege actions to Commission based on marijuana prescribing. Commission is to develop regulations to implement the provisions of this act. Draft regulations published, but not adopted until May 2015.

SB 364 or Chap. 158, 2014:

Decriminalized the possession of less than 10 grams (.7 oz.) of marijuana. Curiously, the criminal penalty for paraphernalia remains —"you can smoke, but not roll it." 17 states have already decriminalized or legalized possession. Now only a fine of up to \$100, for first offense possession.

Note, that the 1 oz. "medical need" complete, affirmative, defense is still available.

2015 Session:

SB 517: VETOED:

Would have decriminalized possession of paraphernalia. It failed and so while possession of small amounts of marijuana is not criminal; possession of even a marijuana pipe is.

HB 911: FAILED:

Would have decriminalized and legalized marijuana for personal possession of up to 1oz. and the right to grow limited number of plants. Comptroller would license commercial growers and distributors.

HB 490: Canniabis Commission:

Renamed the Marijuana Commission to the Cannabis Commission. Physician registry simplified. Processor added and defined. Four year initial licensure.

Real Social Progress

SB 472 / Chap. 353: Divorce, Immediate and Total; Now Available:

Maryland citizens may now be granted an *immediate* divorce if they have a separation agreement and have no children. How is that for real progress?