

The State of Acupuncture Legislation in the U.S., Part Two

By Editorial Staff

In last month's issue, the editors of *Acupuncture Today* looked at several laws that had been introduced in states lettered A through M -- specifically, Arkansas, California, Florida, Maine, Maryland, Massachusetts, Michigan, and Missouri -- and the effect those laws could have on the practice of acupuncture.

In this issue, we'll examine proposed laws in states lettered N through W, and provide an update on the laws mentioned in last month's article.



New Jersey

Assembly Bill 1667, introduced by Assemblyman Kevin O'Toole, would amend existing law to require the state's Acupuncture Examining Board to provide a Chinese-language version of the written examination given to those applying for acupuncturist certification. Current law requires the board to administer the exam only in English. The bill was referred to the Assembly Regulated Professions and Independent Authorities Committee, but no further action has been taken as of press time.

Senate Bill 2374 (introduced concurrently as Assembly Bill 3687) would expand the scope of practice for acupuncturists significantly, while giving them more freedom to treat patients. Among the highlights contained in the legislation are provisions that would allow acupuncturists to see a patient without a prior referral or diagnosis from a licensed physician. Instead, acupuncturists will be required to advise their patients about the importance of consulting with a licensed physician about their condition, and will have patients sign a form indicating that they the acupuncturist provided them with that advice.

The bill also provides for the licensure of acupuncturists, rather than a certification process, and allows them to use the designations "LAc" and "licensed acupuncturist." In addition, acupuncturists would benefit from an improved scope of practice that includes *tuina*, shiatsu and other forms of Oriental massage, along with "Oriental dietary therapy; herbology; lifestyle and behavioral education; laser stimulation in accordance with relevant federal law; cupping; thermal methods; magnets; *gua sha*; and percutaneous and transcutaneous electrical nerve stimulation."

The Assembly version of the bill was passed 75-0 (with two abstentions) on March 14, 2005, and received by the Senate the same day. It is currently being reviewed by the Senate Commerce Committee.

New York

Assembly Bill 81 would amend the state's education law to permit podiatrists to become certified as acupuncturists. Current law only allows physicians and dentists to apply to the state's Education Department to become certified acupuncturists. An additional provision would allow the Education Department to establish rules and regulations regarding acupuncturist certification. However, physicians, dentists and podiatrists would not be allowed to represent themselves as "licensed" acupuncturists, or to utilize acupuncture "beyond the scope of their medical, dental or podiatric practices, respectively." The legislation has been sent to the Assembly Insurance Committee for review.

Introduced by Assemblywoman Deborah Glick, Assembly Bill 2670 would amend existing insurance laws to require companies to reimburse for services provided by licensed acupuncturists. AB 2670 was referred to the Assembly Insurance Committee in January.

Assembly Bill 3932 (introduced concurrently as Senate Bill 2131) would help to redefine the scope of practice for acupuncturists by providing more comprehensive definitions of "acupuncture," "Chinese medicine," "profession of acupuncture," and "doctor of Chinese medicine." It would also specify which types of providers could use the titles "licensed acupuncturist," "doctor of Chinese medicine" and "certified acupuncturist." In addition, the bill would repeal a provision in existing law that requires licensed acupuncturists to advise their patients to consult with an allopathic medical doctor regarding the patient's condition. Both bills have been referred to the Higher Education committees of the Senate and Assembly, respectively.

Similar to AB 2670, **Senate Bill 1496** (introduced by Sen. Velmanette Montgomery) would require group health and accident insurance policies, along with policies for hospital coverage, to provide coverage of acupuncture services, whether they are performed by a licensed acupuncturist or a certified acupuncturist. The Senate Insurance Committee is currently reviewing SB 1496 for consideration.

Senate Bill 5035 would expand the overall size of the state's acupuncture board, along with the number of licensed acupuncturists who may serve on the board. Currently, the board is comprised of "not less than eleven members" appointed by a board of regents. Of those 11, four members are licensed acupuncturists, four are licensed physicians certified to use acupuncture, and three are members of the public. SB 5035 would increase the total number of board members to 13, with six members being licensed acupuncturists. SB 5035 was referred to the Senate Higher Education committee in April.

North Carolina

House Bill 1357 clarifies the duties of the state's Acupuncture Licensing Board, and establishes a new series of fees for acupuncture schools, continuing education providers, and acupuncturists whose licenses expire or need to be verified. The bill also gives the board the power to set the minimum standards for continuing education requirements for licensure renewal. Applicants for license renewal will still need to complete 40 hours of board-approved continuing education units every two years. HB 1357 passed the North Carolina House in May, and received a favorable vote from the Senate Health Care Committee. It is currently under review by the Senate Finance Committee.

Oregon

Senate Bill 285 would expand the size of the Oregon Pain Management Commission from 17 members to 19 members, and would allow licensed acupuncturists and pharmacists to serve on the commission. The bill would also require licensed acupuncturists to complete one pain management education program that has been developed either by the Pain Management Commission, or by the commission in conjunction with the appropriate regulatory agency. SB 285 has passed both the House and Senate, and currently awaits the signature of Gov. Ted Kulongoski.

New rules proposed in **House Bill 2672** will require retail sellers of "Oriental pharmacopoeia" (described in the bill as "herbs and other dietary supplements described in traditional Oriental texts commonly used in accredited schools of Oriental medicine") who are not licensed acupuncturists to label their products with

appropriate content and weight information before being sold. A person may not sell Oriental pharmacopoeia unless that person is registered with the Oregon Board of Medical Examiners. Persons found in violation of the law could face punishment in the form of a 30-day jail sentence, a fine of up to \$1,250, or both. At present, no legislative action has been taken on HB 2672.

Rhode Island

As in other states, legislators in Rhode Island have introduced **Senate Bill 626**, a measure that would provide for the coverage of acupuncture services under both individual health insurance policies as well as group insurance policies. The bill is rather comprehensive in that it amends existing law related to the services provided by a doctor of acupuncture as they pertain to accident and sickness insurance policies, nonprofit hospital service corporations, nonprofit medical service corporations and health maintenance organizations. SB 626 was introduced in February and has been referred to the Senate Health and Human Services Committee.

Tennessee

House Joint Resolution 110 designates the 24th of October of each year as "Acupuncture and Oriental Medicine Day" in Tennessee. Although the bill is symbolic in nature, and does not affect the actual practice of acupuncture in Tennessee, it should be noted that HJR 110 received tremendous support from the state legislature. More than 115 legislators eventually signed on as co-sponsors of the bill, which was first introduced in February. It passed the House and Senate by a combined vote of 127-0 in May. It was signed into law by Gov. Phil Bredesen on May 27.

Two other pieces of legislation introduced in the current session - **House Bill 1524** (introduced concurrently as **Senate Bill 1405**) and **House Bill 686** (introduced concurrently as **Senate Bill 1741**) - pertain to the Tennessee Advisory Committee for Acupuncture. HB 1524 would push back the termination date of the advisory committee to June 30, 2009, while HB 686 would increase the committee's membership by adding a physician member who would be appointed by the governor. HB 1524/SB 1405 has been referred to both the House and Senate Government Operations committees. HB 686 was introduced in February but has yet to be reviewed by a House committee, while the Senate version of the bill has been assigned to the Senate General Welfare, Health & Human Services Subcommittee.

Texas

House Bill 2153 would give the Texas State Board of Acupuncture Examiners (TSBAE) the power to regulate new institutions that train people to become acupuncturists. Subject to the medical board's advice and approval, the TSBAE will have the power to "certify or otherwise approve institutions located in this state that provide the education or other training necessary for an individual to qualify for a license to practice acupuncture," and to "deny or withdraw certification or other approval with regard to institutions ... that fail to meet certification requirements or maintain other standards set by the acupuncture board." The TSBAE would not have the power to regulate institutions that have already been certified or otherwise approved by the board, however. It has currently been assigned to the House Higher Education Committee.

House Bill 2371 closes two loopholes in the state's insurance code that have allowed health maintenance organizations and preferred provider organizations to deny reimbursement for services to acupuncturists. While the bill doesn't require HMOs or insurers to offer acupuncture as a covered service, plans that do include acupuncture in the services covered by those plans "may not refuse to provide reimbursement for the performance of a covered acupuncture service solely because the service is provided by an acupuncturist." HB 2371 passed the House on May 13 and the Senate on May 23, and was signed into law by Gov. Rick Perry on June 17.

Senate Bill 1167, similar to HB 2153, would revise the powers of the Texas State Board of Acupuncture Examiners. While still subject to the advice and approval of the state's medical board, the TSBAE would have the power to "approve educational programs or institutions of acupuncture that meet the acupuncture board's minimum standards." The bill would also require the medical board to consider training standards established by the Accreditation Commission for Acupuncture and Oriental Medicine when establishing its own education and training requirements, and extend the life of the TSBAE to Sept. 1, 2017. It was referred to the Senate Committee on Health & Human Services in March.

Washington

House Bill 2266 is an attempt to restrict access to certain "precursor drugs" used to manufacture methamphetamine, including ephedrine. As a result, the sale of products containing ephedrine in Washington will be limited only to pharmacies, registered shopkeepers, itinerant vendors, and "traditional Chinese herbal practitioners." The bill defines a traditional Chinese herbal practitioner as "a person who is certified as a diplomate in Chinese herbology from the National Certification Commission for Acupuncture

and Oriental Medicine or who has received a certificate in Chinese herbology from a school accredited by the Accreditation Council on Acupuncture and Oriental Medicine." HB 2266 also places restrictions on who can purchase products that contain ephedrine, and the amount of ephedrine-containing products that can be sold by vendors.

HB 2266 passed both the House and Senate in April, and was signed into law by Gov. Christine Gregoire in May. It becomes effective Jan. 1, 2006.

West Virginia

Senate Bill 445, introduced in March, would require the West Virginia Acupuncture Board to conduct routine inspections of acupuncture facilities, and give the board the authority to take appropriate action against people found to be in violation of West Virginia law or board rules, without having to inform those people of their violations via a written complaint. The bill was referred to the Senate Government Organization Committee, but did not pass.

Two identical bills - SB 168 and SB 528 - were introduced in February and March, respectively. Both bills called for coverage of acupuncture services under a wide range of insurance plans and policies, including accident and sickness insurance, group accident and sickness insurance, hospital service corporations, health service corporations, health care corporations and health maintenance organizations. SB 168 and SB 528 were both referred to the Senate Banking and Insurance Committee, but failed to pass out of committee.

Legislative Update

Since the publication of the first part of this article, several developments have taken place in various states where acupuncture laws have been introduced. Among the more recent events (as of July 1):

Arkansas

Senate Bill 976 was amended three times by the Senate Committee on Public Health, Welfare and Labor. At this time, no further action has been taken on the bill.

California

Assembly Bills 1113, 1114, 1115 and **1117** were all passed by the Senate Business & Professions Committee on June 27. They are expected to be passed by the Senate and signed into law by Gov. Arnold

Schwarzenegger in the immediate future. Assembly Bill 1116 failed to pass out of the Senate Business & Professions Committee. Senate Bill 840 passed the Senate and is now being reviewed by the Assembly's Health and Rules committees. Senate Bill 233 did not make it out of the Senate Appropriations Committee, but will likely be reintroduced next year.

Maine

Legislative Document 566 was tabled and remained on the legislative calendar until June, at which time the Maine Legislature adjourned, leaving the bill "dead."

Michigan

Senate Bill 351 passed the Senate 35-0 (with three excused votes) on June 30, and has been referred to the House Committee on Health Policy.

Make sure to read next month's issue of *Acupuncture Today* for an update on the legislation discussed in this issue. Readers are also encouraged to visit the National Conference of State Legislatures (www.ncsl.org), which contains links to every state legislature. Many legislative sites allow users to conduct text-based searches of bills and track the status of particular legislation.



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