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# HEALTH POLICY BULLETIN

**FOCUS: PROFESSIONAL LICENSURE AND DISCIPLINE**

Approximately 30 bill drafts have been consolidated into a package of 11 (HBs 5903-5913) that will redefine Michigan's licensure and discipline system for health professionals. The package, which has bipartisan support, represents a legislative distillation of the report issued in March 1990 by the Special Ad Hoc Committee on Physician Licensure (see the April 1990 *Health Policy Bulletin*).

HB 5903 creates the health professionals disciplinary board in the Department of Licensing and Regulation (L&R) and empowers it to discipline health professionals. (HB 5904 withdraws this responsibility from the licensing boards.) The new board will be comprised of seven gubernatorial appointees, five of whom are public members (no more than three may be from the same political party). The other seats will be filled by temporary members who are on the board of licensure or registration of the individual subject to discipline. For example, a disciplinary matter concerning an RN will be heard by the new board's five public members and two from the RN licensure board; an action concerning an MD will be heard by the five public members and two from the MD licensing board. While the bill is silent on the professional qualifications of the five public members, it is reasonable to assume that negotiations and compromises will occur similar to those that led to the present membership of the Certificate of Need Commission, and the resulting board will include people who are health professionals or are involved in the health field. The controversial provision in the early draft that would have made the public members full-time state employees has been eliminated.

Below the disciplinary board will be regional disciplinary panels with members appointed by the director of L&R; these panels—the main purpose of which will be factfinding, not disciplinary—will be comprised of two members of the same profession as the person who is the subject of the complaint and a contractual attorney (the attorney general's office will represent the L&R before the panel, however).

Some of HB 5903's other provisions provide confidentiality for persons reporting violations by health care professionals; require that professionals have information at their practice sites that explains how to file a claim; and adds to the grounds for license revocation violations of standards of practice in the Medicaid and Medicare programs as well as violations of the drug control laws and rules. HB 5905 requires health facilities and/or agencies to notify other facilities or agencies of disciplinary actions against any former staff member requesting privileges or being considered for professional employment elsewhere; patients seen or treated by a disciplined professional within the past 12 months also must be notified.

HBs 5906-5910 amend related laws. HB 5906 exempts some records from disclosure requirements (amends the Freedom of Information Act). HB 5907 exempts hearings held by licensure boards from the Open Meetings Act. HB 5908 also exempts settlement conferences from the Open Meetings Act and requires decisions to be written in plain language. HB 5909 imposes upon the courts the duty of reporting to L&R the names of health professionals convicted of crimes involving the illegal delivery, possession, or use of alcohol or a controlled substance (these provisions amend the Health Occupations Article of the Public Health Code). HB 5910 adds L&R to the agencies able to search court documents free of charge (amends the Revised Judicature Act). HB 5911 establishes as public the records of closed professional liability claims filed with the Insurance Bureau and requires insurers to forward the claims information to the appropriate licensure board (amends the Insurance Code).

HB 5912 creates a health professions regulatory fund for the new disciplinary process, estimated to cost about $5 million a year; the annual licensing fees for chiropractors, dentists, and MDs will go up to $90 a year, and fees for counselors, dental assistants, and hygienists also will increase. HB 5913 increases fees for all classes of nurses and trained attendants (to $20 annually); optometrists, osteopathic physicians, podiatrists, and psychologists holding doctoral degrees ($90); pharmacists ($40); pharmacies ($50); and other health professionals (master's level psychologists, occupational therapists, sanitarians, and veterinarians). Fees may be increased annually by L&R at the beginning of a fiscal year by no more than the percentage wage increase given to classified civil servants in the department for that fiscal year.

Sixteen groups or organizations testified at a public meeting on July 31 chaired by Rep. Gubow, the principal legislative author of the package. All expressed concerns about the constitutionality of a discipline board composed mainly of public rather than professional members (Article 5, Section 5, of the Michigan constitution requires that professionals comprise the majority on their board and vests responsibility for discipline with the boards). Hospitals fear that if they are required to release peer review data on staff members seeking employment elsewhere, it will undermine the confidentiality of the peer review process, making it even more difficult than at present to induce physicians to serve

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on peer review panels. Professional groups are concerned about how the regional panels will operate and also about the fee increases. The attorney general would prefer to be involved from the outset of the complaint process; in the AG's view, it is his role to represent the public from the very beginning of an investigation. Some insiders see this as a turf battle between L&R and the AG.

On the positive side, the timeline for the new process (nine months from beginning to end) was well received, and concern about the proposed fee increases subsided when it became apparent that Michigan's are among the lowest in the nation. Virtually all the professional groups favored having the increased fees earmarked for the discipline process; they would prefer, however, to have the fees earmarked but keep the present system, a turn of events that appears most unlikely. (It should be noted that HB 4712, currently in the Senate Committee on Health Policy, creates a program to help rehabilitate providers impaired by substance abuse which also would be funded from the increased licensing fees.)

"All in all, it was a good meeting. People understood that they needed to bring their concerns to the table, and they did," said Judy Karandjeff, legislative research analyst, House Democratic Research Staff. She added that Rep. Gubow hopes to have the package through the house in early fall.

## FOCUS: MEDI-CAL LAWSUIT

Although it is extremely unlikely that Michigan physicians will sue the state Medicaid program over levels of reimbursement, Medicaid recipients may do so. In 1987 the Medi-Cal program was sued successfully by a coalition of physicians and recipients over access. The case, *California Medical Association* v. *Kizer*, resulted when the state Department of Health Services proposed to implement a 10 percent cut in provider reimbursement except for certain primary care specialties; the coalition was successful in obtaining from the U.S. District Court a permanent injunction banning the cut.

At issue was whether the access provisions of the federal Medicaid statute were being violated; the statute requires state Medicaid programs to reimburse providers (other than hospitals and nursing homes) at a level that guarantees Medicaid recipients the same access to medical services as the general population. This requirement has been interpreted by the Health Care Financing Administration to mean that rates of reimbursement should be set so that, at a minimum, two-thirds of the practitioners in a state will participate. A second provision in the federal statute explicitly prohibits use of budgetary considerations as the sole factor in determining rates; that is, states cannot alter Medicaid payment rates to suit their budgetary needs. The coalition was able to make the case that access was well below the two-thirds level and, indeed, would fall to about 38 percent if the cut were implemented. Documentation in the pleadings indicated that specialty care was unavailable for Medi-Cal recipients in several counties in California, that provider reimbursement would drop to the point where it would average 38.8 percent of the usual charge for a limited follow-up office visit ($34.13), and that the cost of providing the service would exceed revenue by $3.54 for a family practitioner. In addition, the proposed cut would reduce the availability of pharmaceuticals and require patients to travel great distances to find a participating pharmacy.

While a decision in California does not set precedent for the federal courts in Michigan, these decisions usually are considered by other jurists, and California long has had a reputation for decisions that ultimately drift into other jurisdictions. It seems to us that someone interested in welfare rights in Michigan may very well take a good look at the California case and decide to test the principle of equal access to care in this state.

## OF INTEREST

Working groups from the House and the Senate staffs will meet on August 24 in Room 424 of the Capitol Building. They will work on the rural health bills (SBs 889-892) at 10:00 a.m. and on the nursing home delicensure bill (HB 5918) at 1:00 p.m.

The first meeting of the Senate Committee on Health Policy is scheduled for September 6 (before the legislature returns); the committee will take up SB 978, the chemical formula bill, and SB 1029, the licensure bill that waives certain requirements for foreign medical graduates who wish to affiliate with a teaching or research institution.

The legislature returns from summer recess on September 11. It is unlikely that much progress can be made on legislation until the budget issues are resolved, particularly the Medicaid budget.

—Frances L. Faverman, Editor

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