

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

Editorial Staff

Unless you've been living under a rock for the past 12 years, chances are you've heard of Representative Maurice Hinchey, a member of Congress from New York, and his efforts to expand access to acupuncturists. Since 1993, his first year in Congress, Rep. Hinchey has shown his support for the profession by introducing the Federal Acupuncture Coverage Act, legislation that would add coverage for acupuncture services to Medicare and the Federal Employees Health Benefits program (FEHB).

Just as the public's acceptance of acupuncture has grown over the years, so has support for the Federal Acupuncture Coverage Act. When it was first introduced in 1993, only five members of Congress signed on to the bill as co-sponsors. By the end of the 108th Congress in December 2004, the bill had received a record 63 co-sponsors. The current version of the act, which was reintroduced by Rep. Hinchey this February, has already garnered 33 co-sponsors. If enacted, it would provide access to acupuncture for more than 40 million Americans who are eligible for Medicare benefits, along with the nine million federal workers, their dependants and retirees who are covered under the FEHB program.

While the Federal Acupuncture Coverage Act would improve access to acupuncture on a national level, it is not the only piece of acupuncture legislation of significance. At present, dozens of bills related to the practice of acupuncture are being debated by state legislatures across the country - some of which could enhance the status of the profession, others of which may have a devastating effect.

Due to space restrictions, *Acupuncture Today* is unable to provide details on every piece of acupuncture legislation currently being proposed in the United States. However, in this issue, we will examine various bills that have already passed or are in session in states lettered A through M. In next month's issue, we will review acupuncture legislation being proposed in states lettered N through W, and provide an update on the legislation discussed in this article.

Arkansas

House Bill 2877 allows the Arkansas Board of Acupuncture and Related Techniques to continue functioning through June 30, 2009, at which time it will be abolished, unless its functions are continued through an act of the General Assembly or transferred to another state agency. HB 2877 passed both the House and Senate, and was signed into law by Gov. Mike Huckabee on April 15.

Senate Bill 976, also known as the "Healthcare Freedom Act," is designed to allow citizens the right to choose what type of health care provider they can see and what type of health care they can receive. The bill specifies that, among other things, citizens ages 18 and older have the right "to evaluate, determine, and contract for the health care modality of his or her choice from a licensed health care practitioner," including acupuncture, herbs, dietary supplements, and other forms of healing. At present, the bill is being debated by the Senate Committee on Public Health,

Welfare and Labor.

California

Assembly Bill 681 would freeze the official medical fee schedule rates for services performed on workers' compensation cases in effect on Dec. 31, 2004, and keep them at that same rate until Jan. 1, 2008. It would also allow the Administrative Director of the Division of Workers' Compensation to adopt and revise an official medical fee schedule for physician services effective Jan. 1, 2008. AB 681 passed the Assembly Insurance Committee on April 27 and has been referred to the Assembly Appropriations Committee for further analysis.

Assembly Bill 1113 would clarify that the ability to diagnose patients is within an acupuncturist's scope of practice. Language contained in AB 1113 specifies that an acupuncturist is authorized "to diagnose within his or her scope of practice." Although it has received opposition from both the California Medical Association and the California Chiropractic Association, AB 1113 passed the Assembly 62-11 and has been sent to the Senate Rules Committee for assignment.

Assembly Bill 1114 would increase the number of continuing education hours for licensure. Currently, licensed acupuncturists are required to complete 30 hours of continuing education every two years as a condition for licensure renewal. AB 1114 would raise the number of hours to 50 every two years. The bill also stipulates that five continuing education hours "shall be dedicated to public health and public safety issues." AB 1114 passed the Assembly unanimously (76-0) on May 16 and has been sent to the Senate for consideration.

Assembly Bill 1115 creates a position known as the "acupuncture assistant." According to AB 1115, an acupuncture assistant is "a person who is not licensed to perform acupuncture, who performs basic administrative, clerical, and supportive services in compliance with this article for a licensed acupuncturist or acupuncture corporation." Acupuncture assistants may not perform acupuncture. AB 1115 passed the Assembly unanimously, 73-0, on May 5, and has been sent to the Senate Rules Committee for assignment.

Assembly Bill 1116 would require people applying for an acupuncture license to complete a postgraduate residency program under the supervision of a licensed acupuncturist. The program would be "comprised of a minimum number of hours" as set forth in regulations adopted by the California Acupuncture Board. The program would not apply to acupuncturists who are already licensed, but to all persons "entering a school or college approved by the board offering a training program related to the study and practice of acupuncture and Oriental medicine, one year after the effective date of the regulations." AB 1116 passed the Assembly 72-4 on May 16, and has been submitted to the Senate for consideration.

Assembly Bill 1117 would change the terms "Oriental medicine" and "Oriental massage" as they are currently used in existing statutes to "Asian medicine" and "Asian massage," respectively. According to an analysis of the bill, AB 117's author, Assemblyman Leland Yee, introduced the legislation because the term "Oriental" is outdated, inappropriate and unnecessary. AB 1117 passed the Assembly on May 5 and has been referred to the Senate Rules Committee for further assignment.

Senate Bill 233 is arguably the most controversial acupuncture bill that has been introduced in California this year. Among other things, the bill would: make the provisions that establish the California Acupuncture Board, and provide for the employ of personnel and the appointment of an executive officer to run the board, inoperative on January 1, 2006, and repeal the provisions on July 1, 2006. amend Section 4927 of the state's Business and Professions Code to authorize

acupuncturists to perform a diagnosis, but only for the purposes of providing acupuncture treatment. Language in SB 233 specifies that " nothing in this section shall be construed to authorize an acupuncturist to diagnose any physical or mental disorder." SB 233 was approved by the Senate Appropriations Committee on May 2, then amended and returned to the committee for consideration. At press time, a public hearing has been scheduled to allow supporters and opponents of the bill to voice their concerns.

Senate Bill 356 would have amended the state's practice act to allow for the practice of "Chinese or Oriental massage" (defined as " the use of pressure techniques through massage, manipulation, mobilization, and electrical stimulation of surface tissue and muscle for the therapeutic objective of stimulation for proper body function") in addition to the modalities currently allowed under state law. It also would have authorized acupuncturists to " order diagnostic tests commonly accepted in the medical community." SB 356 was referred to Senate Business and Professions and Economic Development Committee in February, but failed to pass out of committee.

Senate Bill 840 would replace private health insurance in California with the California Health Insurance System, a new state program designed to be "the predominant payer of health care services for all California residents." All California residents would be eligible to enroll in the system, and could receive a wide range of benefits, including acupuncture, that are deemed "medically appropriate" by the resident's health care provider. SB 840 has already passed two Senate committees and is currently being reviewed by the Senate Appropriations Committee.

Florida

Senate Bill 586 would have eliminated the definition of "Oriental medicine" from the state's practice act, and revised the definitions of "acupuncture," "acupuncturist," "board" and "license" to include the term "acupuncture and Oriental medicine." In addition, the state's acupuncture board would be renamed to "Board of Acupuncture and Oriental Medicine," and the term "acupuncturist" would change to "acupuncture physician." The board would also be granted the authority to administer its duties relating to continuing education, including rules for determining the criteria for approving provider qualifications and programs. The bill was withdrawn from both the Senate Health Care and Health and Human Services Appropriations Committees in February, less than a month after being referred to those committees for review.

Maine

Legislative Document 566 would update the state's definition of "chiropractic acupuncture," a modality that may only be practiced by individuals who have received chiropractic acupuncture certification from the state's Board of Chiropractic Licensure. Chiropractic acupuncture would be expanded to include the use of microelectric current, magnetic stimulation, moxibustion and other forms of heat therapy, therapeutic uses of sound and light, cupping techniques, and acupressure techniques. As we go to press, the bill has been referred to the House Committee on Business, Research and Economic Development, but has yet to get out of committee.

Maryland

House Bill 1305 , introduced Feb. 11, 2005, will require the State Employee and Retiree Health and Welfare Benefits Program to "integrate alternative medicine" into the state plan benefits package, including acupuncture, chiropractic and massage therapy. The integration of alternative medicine would include the following:

- provider profiling, which would analyze each provider's clinical outcomes and cost-effectiveness;

- provider credentialing, including specialty-specific testing for clinical and diagnostic competency;
- utilization review and medical case management; and
- patient education about alternative medicine.

In addition, the Department of Budget and Management would be required to report to the Maryland General Assembly each September 1 on the clinical and cost-effectiveness of the integration of alternative medicine. If passed, HB 1305 would go into effect January 1, 2006. The Maryland Acupuncture Society is officially opposing HB 1305, and has included information about the bill on its Web site (www.maryland-acupuncture.org).

Massachusetts

Senate Bill 755 would establish the Massachusetts Health Care Trust, an agency charged with providing universal and affordable health care coverage for all Massachusetts residents, and increasing health care provider, consumer, employee, and employer satisfaction with the state's health care system. The agency would pay for all professional services provided by eligible providers and facilities, including acupuncture, with operating funds and payment of services to be generated through a trust fund. The bill was referred to the Joint Committee on Healthcare Financing in January 2005; no further action has been taken at press time.

Michigan

Last year, acupuncturists in Michigan were on the verge of obtaining a momentous legislative victory when both the House and Senate passed House Bill 5205, a law that would have created a registration process for acupuncturists and formed a state acupuncture board. Unfortunately, HB 5205 became the victim of a pocket veto, as the legislature adjourned less than a week after the bill was delivered to the desk of Gov. Jennifer Granholm.

This year, lawmakers have introduced Senate Bill 351, which includes language nearly identical to HB 5205 and would create a registration process for acupuncturists in Michigan. Among other things, SB 351 would:

- prohibit an individual from calling himself or herself an "acupuncturist," "certified acupuncturist" or "registered acupuncturist" without being registered;
- create the Michigan Board of Acupuncture, which would operate within the auspices of the Department of Community Health and consist of eight voting members (four acupuncturists, three physicians, and one public member);
- require the Department of Community Health, in consultation with the board, to establish rules regarding the minimum standards for registration as an acupuncturist; and
- establish application and registration fees.

SB 351 was introduced on March 24, 2005, and has been referred to the Committee on Health Policy. An identical bill (HB 4589) was introduced in the House on April 12.

Missouri

Senate Bill 348 would exempt dentists from the state's requirements for acupuncture licensure, but only to the extent that a dentist performs "oral acupuncture." However, should a dentist also use the title of acupuncturist, or perform acupuncture on another area of the body, he or she would still be required to fulfill the state's acupuncture licensure requirements. SB 348 has already passed the Missouri Senate and, at press time, has been submitted to the House Professional Registration & Licensing Committee for review.

How You Can Make a Difference

Each year, lawmakers introduce hundreds, perhaps thousands, of laws that can have an impact on one's everyday life. While only a small number of those laws are related to acupuncture, they can affect everything from insurance reimbursement for services, to scope of practice, to regulatory and disciplinary actions. Fortunately, there are several ways for you to get involved and know how these laws can affect your practice.

- Contact your state acupuncture association to see what bills have been proposed and how those bills could affect the acupuncture profession. Many associations have Web sites that contain news and information on upcoming legislation, along with form letters that can be customized and sent to legislators. In addition, both the National Acupuncture and Oriental Medicine Alliance and the American Association of Oriental Medicine contain links to state associations on their Web sites.
- Find out who your elected officials are, both at the state and national levels. Web sites such as YourCongress (www.yourcongress.com) and Project Vote Smart (www.vote-smart.org) will allow users to find their representatives.
- Register to vote (if you are not already registered). Elected officials are more likely to listen to the concerns of a registered voter than someone who is not registered.

In addition, we would like to inform our readers that the information in this article is accurate as of May 24, 2005 (the date this issue went to press), which means that the status of some of the bills discussed above could change significantly by the time the article appears in print. As a result, you are encouraged to visit the National Conference of State Legislatures (www.ncsl.org), which contains links to every state legislature. Most legislature sites allow users to conduct text-based searches of bills and to track their status throughout the legislative process.

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