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Eliminating Scope of Practice Barriers for Illinois Physician Assistants

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I. INTRODUCTION

Among the major challenges facing the healthcare system in Illinois, the current gap in consumer access to primary care providers is a key concern.[1] Factors such as changing demographics, the increased volume of insured individuals under the Patient Protection and Affordable Care Act (PPACA), and a declining number of primary care physicians contribute to the need for expanding mid-level practitioner scope of practice in Illinois.[2] Mid-level practitioners are non-physicians and provide care to patients under the supervision of a licensed physician.[3] Examples of mid-level practitioners include registered nurses, nurse practitioners, and physician assistants (PAs).[4]

The current trend toward physician specialization further exacerbates consumer access to primary care.[5] A recent Congressional Report stated that the national physician population is approximately one-third primary

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1. ALEXANDRA LUTEREK & MARGIE SCHAPS, HEALTH AND MED. POL'Y RES. GRP., ELIMINATING SCOPE OF PRACTICE BARRIERS FOR ILLINOIS ADVANCED PRACTICE NURSES 6 (2013), *available at* http://hmprg.org/assets/root/Safety%20Net/Nurse%20Practice%20Act%20Position%20Paper.pdf.

2. *Id.* at 4, 6-7.

3. DAN TENNENHOUSE, ATTORNEYS MEDICAL DESKBOOK (4th ed. 2013), *available at* Westlaw.

4. *Id.*

5. *See* SUZANNE KIRCHHOFF, CONG. RESEARCH SERV., R42880, PHYSICIAN PRACTICES: BACKGROUND, ORGANIZATION, AND MARKET CONSOLIDATION 4 (2013), *available at* http://www.fas.org/sgp/crs/misc/R42880.pdf.

care physicians and two-thirds specialists.[6] The demand for primary care physicians in Illinois appears to follow this national trend, especially in Health Professional Shortage Areas (HPSAs), which exist in a majority of counties across the state and lack necessary health services in primary care.[7] One way to increase consumer access to primary health care in a specialty-focused industry is to ensure that mid-level practitioners are utilized to their full capacity.[8]

PAs play an integral role in the delivery of health care by managing common diagnoses, providing routine treatments, and allowing physicians to focus on more complex patient care that requires their full expertise.[9] Specifically, PA practice in areas experiencing a shortage in primary care physicians provides access for patients who would otherwise have to endure lengthy waiting periods or travel long distances to receive the care that they need.[10] Scope of practice for PAs is largely regulated by state legislatures through the implementation of laws that legally authorize PAs to provide certain medical services.[11] In some states, however, PAs' ability to provide care is constrained by laws that unnecessarily restrict the services that they may be otherwise qualified to provide and consequently limit consumer

6. *Id.*

7. ILLINOIS HOSP. ASS'N, ILLINOIS NEW PHYSICIAN WORKFORCE STUDY 5 (2010), *available at* http://www.ihatoday.org/uploadDocs/1/phyworkforcestudy.pdf.

8. *See* REBECCA LEBUHN & DAVID SWANKIN, CITIZEN ADVOCACY CTR., REFORMING SCOPES OF PRACTICE 2 (2010), https://www.ncsbn.org/ReformingScopesofPracticeWhitePaper.pdf; *see also* Melinda Beck, *Battles Erupt Over Filling Doctors' Shoes*, WALL ST. J., Feb. 4, 2013, http://online.wsj.com/news/articles/SB10001424127887323644904578271872578661246 (discussing the growing demand for PAs in primary care and rural areas as a result of more doctors choosing to specialize and work in urban areas).

9. AM. ACAD. OF PHYSICIAN ASSISTANTS, SUPERVISION OF PHYSICIAN ASSISTANTS: ACCESS AND EXCELLENCE IN PATIENT CARE 2-3 (Oct. 2011), *available at* http://www.aapa.org/uploadedFiles/content/The_PA_Profession/Federal_and_State_Affairs/Resource_Items/SLI_PASupervision_110811_Final.pdf.

10. Linda J. Vorvick, *Physician Assistant Profession (PA)*, MEDLINEPLUS, http://www.nlm.nih.gov/medlineplus/ency/article/001935.htm (last updated Aug. 12, 2011).

11. MICHELE ROTH-KAUFFMAN, THE PHYSICIAN ASSISTANT'S BUSINESS PRACTICE AND LEGAL GUIDE 29 (2006).

access to primary care.[12]

This article argues that the Illinois Legislature should eliminate certain restrictive supervision requirements for PAs in order to expand consumer access to primary health care. Part II reviews the history of the PA profession and the current legal framework in which Illinois PAs practice. Part III explores issues arising from physician supervision requirements that support their elimination and proposes policy changes to expand scope of practice for PAs. Finally, Part IV offers a conclusion on the issues surrounding scope of PA practice in Illinois and advocates for the elimination of certain restrictive supervision requirements in order to expand consumer access to primary health care.

II. BACKGROUND

Duke University established the first PA training program in the mid-1960s.[13] A principal motivator for the creation of the PA profession was the need for greater patient access to primary care.[14] PAs are defined as healthcare professionals who have graduated from an accredited PA educational program and are authorized by a state to practice medicine under the supervision of a licensed physician.[15] PAs generally perform a range of traditional clinical activities such as taking patient histories, performing physical examinations, ordering and interpreting laboratory tests, diagnosing and tailoring treatment plans to individual patient needs, and prescribing medicine.[16]

The scope of PA practice is defined by four parameters: education and

12. *See* LEBUHN & SWANKIN, *supra* note 8, at 3.
13. Vorvick, *supra* note 10.
14. Bettie Coplan et al., *Physician Assistants in Primary Care: Trends and Characteristics*, 11 ANNALS OF FAM. MED. 75, 75 (2013) (discussing the history and evolution of the PA profession).
15. ROTH-KAUFFMAN, *supra* note 11, at 1.
16. *Id.* at 2-4.

experience, healthcare facility policies, state laws, and delegation by supervising physicians.[17] The PA educational program provides students with extensive medical training through a combination of classroom and clinical instruction.[18] The length of the program is about twenty-seven months.[19] PA students also must complete 2,000 hours of supervised clinical practice in order to graduate from an accredited program.[20] Similar to other health practitioners, a PA's medical knowledge continues to develop while practicing in the clinical environment and through continuing medical education.[21] In addition to education and experience, the healthcare facilities that employ PAs also shape the scope of PA practice.[22] For example, healthcare facilities such as hospitals and acute care centers authorize PAs to provide services by granting them with privileges and maintain the right to limit the responsibilities assigned to employed PAs.[23]

Beyond educational training and the policies of healthcare facilities, state law governs PA practice.[24] The first state laws regulating PA practice in the 1970s were added as simple amendments to a state's medical practice act and allowed broad delegation authority for supervising physicians.[25] Many states subsequently attempted to identify specific tasks and medical services that PAs could provide as the profession continued to grow.[26] Today, the majority of state laws permit a supervising physician to determine the scope

17. AM. ACAD. OF PHYSICIAN ASSISTANTS, PHYSICIAN ASSISTANT SCOPE OF PRACTICE 1 (Oct. 2011), *available at* http://www.aapa.org/uploadedFiles/content/The_PA_Profession/Federal_and_State_Affairs/Resource_Items/PI_PAScopePractice_110811_Final.pdf.

18. *Id.* at 2.

19. *Id.*

20. *Id.*

21. *Id.*

22. *See* AM. ACAD. OF PHYSICIAN ASSISTANTS, THE SIX KEY ELEMENTS OF A MODERN PHYSICIAN ASSISTANT PRACTICE ACT 1 (March 2011), *available at* http://www.aapa.org/uploadedFiles/content/Common/Files/SL_KeyElements_v3.pdf.

23. *See* AM. ACAD. OF PHYSICIAN ASSISTANTS, *supra* note 17, at 2-3.

24. *Id.* at 2.

25. *Id.*

26. *See id.*

of PA practice through broad delegation powers.[27] The reason that most states allow a supervising physician to determine a PA's scope of practice, rather than attempt to define every service that a PA can perform is because a statutory list created by state legislators could not possibly cover every service that all PAs are qualified to provide.[28] Additionally, state legislators would never be able to amend laws to keep pace with the rapidly evolving field of medicine.[29] Overall, PA scope of practice should be consistent with educational training and determined by the supervising physicians.[30]

A. Current Legal Framework in Illinois

The Physician Assistant Practice Act (the Act) regulates all PAs practicing in Illinois.[31] The Illinois Legislature enacted the Act in 1987.[32] The purpose of the Act was to protect the public from incompetent performance by unqualified non-physicians and to define the role of PAs in the healthcare system.[33] The Act defines a PA as a person who has been certified by the state and performs procedures under the supervision of a physician.[34] The Act does not require the physical presence of a supervising physician at all times when a PA renders services as long as a supervising physician is available for consultation when needed by telephone or telecommunications.[35]

Under the Act, supervising physicians are permitted to use seemingly broad discretionary authority to determine the number of PAs that they will

27. *See* AM. ACAD. OF PHYSICIAN ASSISTANTS, *supra* note 22, at 1-2.
28. *Id.* at 1.
29. *Id.*
30. *See* AM. ACAD. OF PHYSICIAN ASSISTANTS, *supra* note 17, at 3.
31. Physician Assistant Practice Act of 1987, 225 ILL. COMP. STAT. § 95/4 (2013).
32. *Id.* § 95/1.
33. *See id.*
34. *Id.* § 95/4.
35. *See id.*

supervise and the tasks that they will delegate to PAs.[36] The Act further provides that written supervision agreements are required for all PAs, except those practicing in a hospital, hospital affiliate, or ambulatory surgical treatment center, as long as a PA in one of these settings possesses clinical privileges granted by the medical facility.[37] A written supervision agreement describes the working relationship between a PA and a supervising physician.[38] A written supervision agreement also defines a PA's scope of practice and duties, including the categories of care, treatment, and procedures that a PA will provide.[39] A supervising physician must periodically review a PA's orders and services to ensure that the PA is acting in accordance with accepted standards of medical practice.[40]

In 2012, the Illinois Legislature amended the supervision provision in the Act to change the previously established limit of two PA supervision agreements per physician to a seemingly broader limit of five full-time equivalents.[41] Accordingly, the Act provides that a supervising physician may supervise a maximum of five full-time equivalent PAs, however the maximum number of PAs allowed is then reduced by the number of collaborative agreements that a supervising physician maintains with other mid-level practitioners.[42] A collaborative agreement is similar to a supervision agreement required for PAs, but is required for all advanced

36. *See id.* § 95/7.
37. *Id.* § 95/7.5-7.7.
38. *Id.* § 95/7.5.
39. *See id.*
40. *Id.*
41. Sandra DiVarco, *Implementing the Restrictions on the Number of Physician Supervision and Collaboration Agreements under Illinois Law*, MCDERMOTT, WILL, AND EMERY 1 (Feb. 2013), *available at* http://www.mwe.com/Implementing-the-Restrictions-on-the-Number-of-Physician-Supervision-and-Collaboration-Agreements-under-Illinois-Law-02-04-2013/.
42. Physician Assistant Practice Act of 1987, 225 ILL. COMP. STAT. § 95/7 (2013).

practice nurses engaged in clinical practice and collaborating physicians.[43] For example, if a physician entered into supervision agreements with two PAs and collaboration agreements with three advanced practice nurses, the physician is prohibited from entering into any additional supervision or collaboration agreements to avoid exceeding a total of five agreements pursuant to the Act.[44] This statutory limitation on the number of PAs that a physician can supervise ultimately restricts the locations that PAs can practice and functions as a barrier against patient access to primary health care in Illinois.

B. The Status of Health Care in Illinois

According to the most recent Commonwealth Fund State Scorecard, Illinois ranks in the bottom quartile for its overall state health system based on factors such as access to care, prevention, treatment, avoidable hospital use and costs, and insurance coverage.[45] Additionally, Illinois ranks twentieth out of all states in the country for its accessibility of health care to various categories of patients.[46] The demand for accessible health care in Illinois will continue to increase for a variety of reasons.[47] As a result of increased life expectancy and the aging Baby Boom generation, the Medicare beneficiary population and the demand for long-term care services is expected to grow.[48] In 2010, about twelve percent of the Illinois population was aged sixty-five and older, and the percentage of the age

43. *See* Nurse Practice Act, 225 ILL. COMP. STAT. § 65/65-35 (2013).
44. *See* DiVarco, *supra* note 41.
45. *Health System Data Center*, THE COMMONWEALTH FUND, http://datacenter.commonwealthfund.org/scorecard/state/15/illinois/ (last visited Dec. 8, 2013).
46. *Id.*
47. *See* ST. OF ILL. COMPTROLLER, POPULATION AGING: ARE GOV'TS READY 1 (July 2007), http://www.ioc.state.il.us/index.cfm/resources/fiscal-focus/july-2007-department-on-aging/.
48. *See* LUTEREK & SCHAPS, *supra* note 1, at 4.

group is projected to become eighteen percent of the population by 2030.[49]

Additionally, a growing shortage of primary care physicians in Illinois also limits patient access to care.[50] In 2010, only about twenty-five primary care physicians for every 10,000 people and twenty PAs for every 100,000 people practiced in Illinois.[51] According to the Illinois Department of Public Health, about one hundred Illinois counties identified as HPSAs.[52] Significant areas of shortage exist in rural areas, small towns, and lower socioeconomic areas.[53]

The full implementation of the PPACA will further demand access to care because it will expand insurance coverage to previously uninsured or underinsured Illinois residents through health insurance exchanges or expanded Medicaid coverage.[54] Approximately 500,000 low-income Illinois residents will become eligible for Medicaid in 2014.[55] In order to meet this increased demand for patient access to primary health care, the federal government invested in the primary care workforce through the establishment of the National Health Service Corps Program, which repays educational loans and provides scholarships to primary care practitioners including PAs.[56] The changing of scope of practice laws is likely to have an

49. ST. OF ILL. COMPTROLLER, *supra* note 47, at 3.

50. *See* LUTEREK & SCHAPS, *supra* note 1, at 6.

51. *Id.; see also Providers and Service Use*, THE HENRY J. KAISER FAMILY FOUND., http://kff.org/state-category/providers-service-use/ (last updated Jan. 14, 2009).

52. ILL. DEP'T OF PUB. HEALTH CTR. FOR RURAL HEALTH, AREAS OF ILLINOIS HAVING STATE PHYSICIAN AND/OR FEDERAL HEALTH PROFESSIONAL SHORTAGE AREAS (Jan. 2009), *available at* http://www.idph.state.il.us/about/rural_health/shortageareas.htm.

53. *See* LUTEREK & SCHAPS, *supra* note 1, at 6.

54. *See id.* at 7.

55. *Id.*

56. *See* MELINDA ABRAMS ET AL., THE COMMONWEALTH FUND, REALIZING HEALTH REFORM'S POTENTIAL: HOW THE AFFORDABLE CARE ACT WILL STRENGTHEN PRIMARY CARE AND BENEFIT PATIENTS, PROVIDERS, AND PAYERS 13 (Jan. 2011), *available at* http://www.commonwealthfund.org/~/media/Files/Publications/Issue%20Brief/2011/Jan/1466_Abrams_how_ACA_will_strengthen_primary_care_reform_brief_v3.pdf.

immediate effect on expanding the supply of primary care providers.[57] Enhancing the role of PAs by eliminating restrictive state regulations is another means of raising the efficiency of primary care practices and a key resource to enduring the challenges that face the primary care workforce.[58]

III. RESTRICTIVE PA PRACTICE LAWS AND IMPLICATIONS FOR ACCESS TO HEALTH CARE

Several physician supervision requirements as provided under the Act unnecessarily constrain PA practice in Illinois and should be eliminated. Limiting a supervising physician to a maximum of five PAs reduced by the number of collaborative agreements the physician maintains ultimately restricts the total number of mid-level practitioners available to serve patients.[59] Furthermore, requiring a supervising physician to review and sign off on routine health services that the physician already deemed to be within a PA's qualifications is an inefficient use of time.[60]

A. Limitations on The Number of PAs That a Physician May Supervise

The American Academy of Physician Assistants recommends that state laws should not include specific numerical limits on the number of PAs that a physician may supervise because the limit may be appropriate in some clinical settings, but not for others.[61] While the number of collaboration agreements that a physician may enter into with advance practice nurses is unlimited, the number of PAs that a physician may enter into an agreement with is restricted.[62] The number of PAs a physician can supervise is further

57. Sarah Klein, *Strengthening the Primary Care Workforce to Meet Population Needs*, THE COMMONWEALTH FUND 2 (May 2011), http://www.commonwealthfund.org/Newsletters/Quality-Matters/2011/April-May-2011/In-Focus.aspx.
58. *See id.*
59. *See* DiVarco, *supra* note 41.
60. *See* AM. ACAD. OF PHYSICIAN ASSISTANTS, *supra* note 27, at 3.
61. *Id.* at 4.
62. *See* DiVarco, *supra* note 41.

limited by how many collaboration agreements the physician already maintains.[63] A physician workforce study conducted in Illinois stated that physicians do not practice in rural settings in part because the workload is greater and the compensation is often lower than in other settings.[64] State regulations that limit physicians' authority to utilize the number of mid-level practitioners they deem necessary removes a valuable resource from physicians.[65] Consequently, a primary care physician practicing in a shortage area may not be able to employ the number of PAs that the healthcare facility requires to manage patient volume more effectively.[66]

The physician-to-PA ratio provision should be eliminated and instead permit supervising physicians to determine the number of PAs they will supervise based on the needs of the patient community and practice.[67] Supervising physicians are in the best position to evaluate the qualifications of PAs, the nature of the practice and patient population, and to implement an efficient supervisory approach.[68]

B. Mandatory Physician Review & Approval of PA Services

Under the Act, a supervising physician is responsible for directing and reviewing the services provided by a PA to ensure that the PA is practicing in accordance with accepted medical standards and that appropriate treatment is rendered.[69] This review requirement resembles chart co-signature requirements in other states where a supervising physician must

63. *See* AM. ACAD. OF PHYSICIAN ASSISTANTS, *supra* note 27, at 3.
64. ILLINOIS NEW PHYSICIAN WORKFORCE STUDY, *supra* note 7, at 12.
65. *See* LEBUHN & SWANKIN, *supra* note 8, at 3.
66. *Id.*
67. *See* AM. ACAD. OF PHYSICIAN ASSISTANTS, *supra* note 27, at 4.
68. *Id.*
69. Physician Assistant Practice Act of 1987, 68 ILL. ADMIN. CODE tit. 1350, § 80 (2013).

co-sign every order or service provided by a PA.[70] The American Academy of Physician Assistants recommends that physician co-signature review should only be required when a supervising physician or healthcare facility determines that it is necessary because it removes a physician's discretion to exercise supervision in the way that works best for the practice.[71] Mandatory physician approval and review of PA services diminishes the effectiveness of healthcare providers by forcing supervising physicians to allocate time to review tasks that are already determined to be within PAs' capabilities and delegated to PAs in written supervision agreements.[72] Delegating basic services to mid-level practitioners such as PAs can improve access to care by allowing a supervising physician to manage patient volume more efficiently.[73]

V. CONCLUSION

The Illinois Legislature should eliminate the restrictive physician supervision requirements as provided by the Act. Specifically, the provision limiting the number of PAs that a physician is permitted to supervise should be eliminated because it unnecessarily restricts PA scope of practice. Additionally, the provision requiring supervising physicians to periodically review a PA's services in order to ensure that the services are in accordance with accepted standards of medical practice should be eliminated because it is an inefficient restriction on PA practice. In order to meet the challenges of the changing healthcare system, physicians must be

70. *See* AM. ACAD. OF PHYSICIAN ASSISTANTS, CHART CO-SIGNATURE AND PHYSICIAN SUPERVISION OF PHYSICIAN ASSISTANTS: WHAT IS BEST FOR PATIENT CARE 2 (June 2011), http://www.aapa.org/uploadedFiles/content/The_PA_Profession/Federal_and_State_Affairs/Resource_Items/SLI_ChartCoSig_070611_FINAL.pdf.

71. *See id.* at 4.

72. *See id.* at 3.

73. *State and Federal Efforts to Enhance Access to Basic Health Care*, THE COMMONWEALTH FUND 3 (Mar./Apr. 2010), http://www.commonwealthfund.org/Newsletters/States-in-Action/2010/Mar/March-April-2010/Feature/Feature.aspx.

able to utilize mid-level practitioners to their full potential.

PAs play a key role in providing primary care by alleviating some of the basic, yet time-consuming tasks that a physician would otherwise have to address. By eliminating restrictive supervision requirements, PAs will be better able to assist physicians in managing a large patient volume and increase the efficiency in the overall delivery of primary health care.[74]

74. Linda V. Green, *Primary Care Physician Shortages Could Be Eliminated Through Use of Teams, Nonphysicians, And Electronic Communication*, 32 HEALTH AFF. 11, 16 (2013).