

NERVE CONDUCTION TESTS AND NEEDLE EMG

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5078 (Substitute H-3)
Sponsor: Rep. Artina Tinsley Hardman
Committee: Health Policy
First Analysis (8-4-04)

BRIEF SUMMARY: The bill would, in general, restrict the performance of needle electromyography (EMG) or the interpretation of nerve conduction tests to specially trained licensed physicians.

FISCAL IMPACT: Implementation of the proposed scope of practice changes may have a modest fiscal impact for licensing administration of the affected health occupations by the Department of Community Health.

It is unknown what fiscal impact the bill will have on the state of Michigan as a payor of health services for Medicaid participants and for employees. A study of 1998 data nationwide indicated that 6 to 11% of electrodiagnostic services were provided by physical therapists. The bill may reduce this rate in Michigan and those services may be administered more often by higher cost providers.

THE APPARENT PROBLEM:

For almost two decades, physicians and physical therapists have been debating the question of whether the performance of needle electromyography (EMG) and interpretation of nerve conduction tests (NCT) belong exclusively within the scope of practice of licensed physicians or if EMGs and NCTs also lie within the scope of practice of specially trained and qualified physical therapists.

Needle EMG (which involves inserting a thin needle into a muscle to record the muscle's electrical activity) and NCT (which determines how well a nerve's signal travels and if something is impeding the signal) are diagnostic medical tests used by physicians to diagnose a range of neuromuscular disorders and diseases such as carpal tunnel syndrome and Lou Gehrig's disease. Physician groups maintain that physical therapists, on the other hand, can treat individuals – under a physician's prescription – using a variety of methods and techniques, including electrical stimulation. Since EMGs and NCTs are used to diagnose and not to "treat" a patient's ailment, they feel physical therapists should no longer be allowed to perform these tests.

Physical therapists, meanwhile, maintain that therapists who have undergone a rigorous academic and clinical training program and who have received national certification by the American Board of Physical Therapy Specialists are capable of performing EMG and NCT safely and cost effectively, and have done so for decades. Opponents of the attempt to legislatively restrict the performance of these procedures to physicians only point out

that according to liability insurance carriers, there has never been a malpractice claim filed against a physical therapist who provided EMG services.

However, since Michigan law appears to allow only licensed physicians to diagnose medical conditions or perform invasive procedures, many believe that the performance of needle EMG and NCT lie solely within the scope of practice of physicians. Physician groups are therefore seeking a legislative answer and have requested that the health code be amended to clearly define who can perform EMGs and NCTs.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code (MCL 333.17001 et al.) to restrict the performance of needle electromyography or the interpretation of nerve conduction tests to specially trained licensed physicians. Under the bill, only an individual who was licensed as an allopathic physician (M.D.) or osteopathic physician (D.O.) and who had successfully completed additional training in the performance and interpretation of electrodiagnostic studies as approved by the appropriate board of medicine could perform needle electromyography or interpret nerve conduction tests. “Electrodiagnostic studies” would mean the testing of neuromuscular functions utilizing nerve conduction tests and needle electromyography. It would not include the use of surface electromyography.

The bill would also allow a licensed podiatrist who had successfully completed additional training in the performance and interpretation of electrodiagnostic studies that was satisfactory to his or her board to conduct such tests. A licensed physical therapist who has been certified by the American Board of Physical Therapy Specialties as an electrophysiologic clinical specialist on the effective date of the bill could perform electrodiagnostic studies that are to be interpreted by a physician if he or she has been performing electrodiagnostic studies in the state on a consistent basis within the five years immediately preceding the bill’s effective date.

A physician would not be allowed to delegate the performance of a needle EMG to another individual unless that individual was licensed to practice medicine or osteopathic medicine and surgery and had also completed the additional training as described above or was a physical therapist who met the requirements in the bill. However, under the provisions of Section 16215, a physician could delegate the performance of nerve conduction tests to a licensed or unlicensed individual who was otherwise qualified by education, training, or experience if those tests were performed under the direct supervision of a physician.

(The health code does not define the term “under the direct supervision of a physician”. However, Part 161 of the code, which pertains to individuals licensed or registered under the Public Health Code, defines “supervision”, except as otherwise provided in the code, to mean the overseeing of or participation in the work of another individual by a licensed health professional in circumstances in which all of the following conditions exist:

- The continuous availability of direct communication in person or by radio, telephone, or telecommunication between the supervised individual and the licensed health professional.
- The availability of a licensed health professional on a regularly scheduled basis to review the practice of the supervised individual in the performance of the individual's functions.
- The provision by the licensed supervising health professional of predetermined procedures and drug protocol.)

MCL 333.17001 et al.

ARGUMENTS:

For:

According to physicians' societies, the practice of medicine continues to be eroded by attempts to expand the scope of practice of ancillary health care professions. Supporters of such efforts believe that allowing allied health professionals to perform procedures historically done only by physicians improves patient access and lowers health care costs. However, physicians believe that these efforts decrease the level of safety and quality of care. In the end, poor patient outcomes increase health care costs and spur malpractice actions.

In regard to the performance of needle electromyography and nerve conduction tests, the results of these tests are used for recommending surgical procedures and to aid in the diagnosis of diseases. Serious risks such as infection, puncturing a blood vessel or vital organ, and entering a contaminated space in the body (such as the bowel) are associated with EMGs and NCTs. In addition, if a test is not performed well, the results give inaccurate information to the physician, thus leading to a wrong or missed diagnosis. Examples provided by the American Academy of Neurology and the American Association of Electrodiagnostic Medicine revealed poor quality patient care as a result of non-physician electromyography that included missed diagnoses of ALS (Lou Gehrig's disease), EMG studies that led to unnecessary surgery, and EMG studies that erroneously suggested carpal tunnel syndrome or other disease states. A misdiagnosis can result in delayed treatment which can in turn impact a patient's quality of life.

Many other states have interpreted their laws to place electrodiagnostic services within the scope of practice of physicians only. Since the interpretation of nerve conduction tests results in making a diagnosis and since needle electromyography is an invasive procedure, only specially trained physicians should be allowed to interpret NCTs and perform needle EMGs. It is time that Michigan lawmakers protect the health and well being of citizens and settle the question once and for all by clarifying in the law that the interpretation of nerve conduction tests and the performance of needle EMGs should only be done by qualified physicians.

Against:

This attempt to restrict the performance of an EMG or NCT to physicians is little more than a turf battle and has little to do with patients' safety. Physical therapists who perform needle EMGs and NCTs have undergone a rigorous academic and clinical training program and certification from the national American Board of Physical Therapy Specialists, as well as maintaining continuing education requirements. In fact, some physical therapists limit their practices to performing electrodiagnostic studies. Many physicians refer their patients to physical therapists and see the proposed legislation as limiting their choice of qualified providers. Physical therapists have been performing electrodiagnostic studies for decades in Michigan and the Board of Physical Therapy is perfectly capable and qualified to investigate complaints regarding safety or quality issues, if there are any. Reportedly, there have been no malpractice claims filed against Michigan physical therapists regarding performing needle EMGs or NCTs.

Passage of the bill would not increase patient safety. Physical therapists do not currently interpret nerve conduction tests, though those with the appropriate training and credentialing do perform needle EMGs. The bill would, however, make it more difficult for some patients, especially those in rural areas where there is a shortage or absence of neurologists or other trained physicians, to obtain a needle EMG or NCT in a timely manner. And, since physical therapists are reimbursed at a lower rate than physicians for performing an electrodiagnostic service, insurance costs (and out-of-pocket expenses for the state's uninsured) are sure to increase.

The bill would grandfather in those physical therapists with the appropriate training and credentialing who have been performing these tests within the last five years, but it would close the field to others down the road. This is unfair and unnecessary at a time when the profession as a whole is moving toward requiring a doctoral degree for entry into the profession and when several quality programs exist to train physical therapists to safely perform these tests.

In the absence of documented harm to patients at the hands of Michigan physical therapists, the bill can only be viewed as an attempt by some physicians to "corner the market" so to speak on a procedure that can and has been done safely and with a high degree of quality by specially trained physical therapists.

POSITIONS:

Representatives from the following organizations indicated support for the bill on 6-15-04: The Michigan Neurological Association, the Michigan Podiatric Medical Association, the Michigan State Medical Society, and the Michigan Academy of Physical Medicine and Rehabilitation.

A representative of the Michigan Nurses Association indicated a position of neutrality on the bill. (6-15-04)

The Michigan Orthopaedic Society submitted written testimony supporting the bill. (10-27-03)

A representative of the Michigan Chiropractic Society testified in opposition to the bill. (6-15-04)

A representative of the Michigan Physical Therapy Association testified in opposition to the bill. (6-15-04)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Susan Frey

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.