Draft Report

2019 Sunrise Review
Acupuncture and Eastern Medicine Scope of Practice
## Contents

Executive summary ......................................................................................................................... 1

Summary of information .................................................................................................................. 2

  Legislative request ....................................................................................................................... 2

  Background ................................................................................................................................. 2

Scope of practice in other states ..................................................................................................... 3

Stakeholder engagement ................................................................................................................. 3

Summary of public comments and hearing .................................................................................... 4

Review of proposal using sunrise criteria ....................................................................................... 8

Recommendations ......................................................................................................................... 10

Appendices

  Appendix A: Request from legislature ....................................................................................... A-1

  Appendix B: Bill draft .................................................................................................................. A-3

  Appendix C: Applicant report and follow up ............................................................................. A-8

  Appendix D: Public hearing summary and follow up ................................................................. A-223

  Appendix E: Written public comments ...................................................................................... A-260
Executive Summary

Representative Cody requested the Department of Health (department) review a proposal under the sunrise law (chapter 18.120 RCW) to “change the scope of practice for acupuncturists, including increasing Point Injection Therapy injectables, clarifying substance use disorder treatments, and providing for the practice of dry needling.” Representative Cody asked the department to assess whether the proposal meets the sunrise criteria for expanding the scope of practice for a regulated health profession.

The draft bill and applicant report also included clarifications to add pain management, ear acupuncture, contact needling, noninsertion tools, and details about the types of needles used in acupuncture to the definition. They also included addition of ashi points, motor points, trigger points, intramuscular needling, and dry needling to the definition of acupuncture points.

In addition, the draft bill made changes to the overall definition of acupuncture and Eastern medicine that may inadvertently broaden the scope of practice.

The Washington Acupuncture and Eastern Medicine Association (WAEMA) was the applicant group for this proposal.

Recommendations:

- The department recommends expanding the scope of practice to add local anesthetics, oxygen, and epinephrine for use in point injection therapy.¹ These are appropriate additions to the acupuncture scope of practice and the applicant group established a need for these substances to increase patient safety by preventing adverse reactions.

- The department recommends WAEMA, Washington Association of Naturopathic Physicians (WANP), Washington State Medical Association (WSMA), the Washington Orthopedic Association, and other appropriate organizations work together to propose alternate language to ensure the amended definition of acupuncture and Eastern medicine in the draft bill remains a clarification, rather than an increase in the scope or practice.²

- The department is not making recommendations regarding the remainder of the changes in the draft bill because they are outside the scope of a sunrise review. The purpose of the sunrise criteria is to establish guidelines for unregulated health professions or “those licensed or regulated health professions which seek to substantially increase their scope of practice.” The remainder of the changes in the bill are clarifications, not expansions of the scope of practice.

¹ With clarifications in the draft bill proposed by the WSMA and WANP listed under Summary of Public Comments and Hearing on page 6.

² WANP and WSMA testified with concerns at the public hearing and requested WAEMA work with them on alternative language. The Washington Orthopedic Association sent a letter with concerns as well.
Summary of Information

Legislative Request

On May 31, 2019, Representative Cody requested the department review a proposal under the sunrise law (chapter 18.120 RCW) to “change the scope of practice for acupuncturists, including increasing Point Injection Therapy injectables, clarifying substance use disorder treatments, and providing for the practice of dry needling.” Representative Cody asked the department to assess whether the proposal meets the sunrise criteria for expanding the scope of practice for a regulated health profession.

The draft bill also included clarifications to add:

- Pain management, ear acupuncture, contact needling, and noninsertion tools such as teishin, enshin, or zanshin;
- Details about the types of needles used; and
- Ashi points, motor points, trigger points, intramuscular needling, dry needling, and other non-specified points throughout the body to the definition of acupuncture points.

In addition, other changes were made to the overall definition of acupuncture and Eastern medicine that may inadvertently broaden the scope of practice and weren’t addressed in the applicant report. The draft bill amends the definition from:

...a health care service utilizing acupuncture or Eastern medicine diagnosis and treatment to promote health and treat organic or functional disorders and includes the following...

To

...a holistic system of medicine often referred to as traditional Chinese medicine, Eastern medicine, and other terms, which includes a variety of traditional and modern therapeutic treatments including, but not limited to, the practice of acupuncture techniques and herbal medicine, to maintain and promote wellness, prevent, manage, and reduce pain, treat substance use disorder, and diagnose and treat disease. Acupuncture or Eastern medicine includes...

WAEMA was the applicant group promoting this proposal and provided the applicant report to address how the proposed bill meets the sunrise criteria.

Background

Acupuncturists were first licensed in Washington in 1985. Practitioners of acupuncture and Eastern medicine are currently regulated under chapter 18.06 RCW and chapter 246-803 WAC.
The criteria for a sunrise review of health professions is outlined in RCW 18.120.010. The purpose of the criteria is to establish guidelines for unregulated health professions or “those licensed or regulated health professions which seek to substantially increase their scope of practice.” The exclusive purpose of any initial or additional regulation of a health profession is protecting the public interest.

The department received the applicant report on May 30, 2019, which requested a review of both clarifications and expansion of the existing scope. The applicant report requested an expansion of the current scope of practice for acupuncturists and Eastern medicine practitioners by adding the injection of local anesthetics, epinephrine, and oxygen for point injection therapy. Acupuncturists are already authorized to use an epinephrine autoinjector in RCW 70.54.440, and the required education and training are specified in WAC 246-803-040 for point injection therapy. The applicant report cites high costs of epinephrine autoinjectors as the main reason to add it explicitly in their statute so they can purchase it directly from wholesalers.

The applicants also requested changes to the scope of practice to further define the types of needles used in practice, as well as the points stimulated by these needles. They also added the practices of intramuscular needling and dry needling to the list of stimulation points. The applicant group argues that the public is confused about the scope of practice for acupuncturists, which requires further clarifications.

Scope of Practice in Other States

47 states regulate the practice of acupuncture and Eastern or Oriental medicine. The three states without regulations are South Dakota, Oklahoma, and Alabama.3

According to the applicant report and follow up research by the department, three states authorize local anesthetics, oxygen, epinephrine, or all three substances for this modality:4

- Colorado allows lidocaine and procaine local anesthetics for point injection therapy, as well as epinephrine and oxygen for emergency use.5
- New Mexico includes authority to prescribe and administer procaine, oxygen, and epinephrine.6
- Utah allows local anesthetics for injection therapy.7

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4 Appendix C, Exhibit E.2, page A-51, and independent research by the department.
5 https://drive.google.com/file/d/0B5zAmhRg5tCiUjVuM1VxSF9jUук/view, accessed September 19, 2019.
Stakeholder Engagement

The department undertook a thorough stakeholder engagement process. Staff reviewed all elements of the legislative request and applicant report before the sunrise hearing. Staff researched the criteria for the sunrise review, examined all exhibits and documents provided by the applicant, and developed questions for the applicant.

On August 2, 2019, the department held a public hearing. The hearing included a presentation by multiple representatives of the applicant group, discussing each requested clarification or expansion of the scope of practice. The sunrise panel followed the presentation by asking specific questions of the applicants about their presentation and the report. Finally, members of the public provided comments, followed by questions from the panel when clarification was needed.

After the hearing, participants were given one week to provide follow up information or to further answer questions that were brought up during the hearing. The department received several follow up comments from the applicant group and stakeholders.

Summary of Public Comments and Hearing

Most of the written and oral public comments from acupuncturists and other health professionals were directed at the proposed addition of the terms dry needling, intramuscular needling, and trigger points to clarify the scope of practice.

Acupuncturists indicated support of these additions, stating:

- Acupuncturists are trained to do these procedures;
- These are Western terms describing acupuncture;
- The AMA recently created a new CPT code that covers dry needling and trigger point acupuncture under the same code; and
- These additions are not intended to limit other health professions from performing the procedures when included in their statutory scope of practice;

The Physical Therapy Association of Washington (PTWA) and individual physical therapists, nurses, and other providers opposed these additions. They stated this is an attempt to limit the practice of dry needling by other professions and that it is anticompetitive. PTWA stated the legislation isn’t necessary, will harm the public, and is a violation of antitrust laws (citing a North Carolina lawsuit as evidence.)
PTWA also added that the applicant group has not provided any evidence that the public is confused by this practice. It cited a Florida administrative law case that found no evidence of any such confusion in the states that allow physical therapists to perform dry needling.

Physical therapists also cited the 2016 sunrise review on a proposal that would have added dry needling to the physical therapy scope of practice. They stated the department’s conclusion was that dry needling fits within physical therapy and included a pathway for physical therapists to safely add it to their scope of practice.

PTWA worked with WAEMA on alternate language they would support, which includes removing the language regarding dry needling and intramuscular needling from Section 1(1)(b) of the draft bill and adding a new subsection (c) to read “Intramuscular needling and dry needling of trigger points and other nonspecific points throughout the body in accordance with Acupuncture and Eastern medicine training and principles.”

The WANP and WSMA expressed concerns that the draft bill inadvertently increases the scope of practice by removing from the definition of acupuncture and Eastern medicine “utilizing acupuncture or eastern medicine diagnosis and treatment” and adding “but not limited to” under “a variety of traditional and modern therapeutic treatments.” They stated these changes broaden the scope of practice outside Eastern medicine. They have agreed to work with WAEMA and legislative staff on alternate language to clarify the definition without inappropriately broadening the scope of practice.

In addition, WANP and WSMA indicated concerns with the bill language regarding use of local anesthetics. They believe the language pertaining to local anesthetics does not clearly limit its use to point injection therapy. Both groups indicated a willingness to work with WAEMA and legislative staff on clarifying language. WAEMA provided suggestions in a follow up letter to the department.

WSMA also requested the bill language regarding use of oxygen and epinephrine include “The rules must specify circumstances where oxygen and epinephrine must be on site and those where it is optional” to increase patient safety.

The Washington State Orthopedic Association has concerns with the addition of local anesthetics, stating it would put patients at risk because acupuncturists lack proper basic training in the broad spectrum of human disease. They added that the proposal extends the scope of “traditional Chinese medicine” into “nontraditional” territory. They stated acupuncturists aren’t properly trained in the broad spectrum of disease and might miss important diagnoses or make erroneous diagnoses that may lead to improper or delayed treatment.

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8 Appendix D, page A-252-257
The department received a few comments in support of the addition of “treat substance use disorder” to the acupuncture scope of practice, stating that acupuncturists have been providing care in chemical dependency clinics for decades and we need to employ all methods to help fight addiction.

Much of the applicant presentation at the public hearing and in the applicant report focused on the addition of the term “intramuscular needling” and “dry needling” to the definition of acupuncture points. The arguments from the applicant group were that this is needed to address patient confusion about whether dry needling is included in the acupuncture scope of practice; overlap and potential confusion over the insertion of acupuncture needles because other professions use different terminology for the same procedures; and a need to update the statutory language to reflect the modern practice of acupuncture.

The applicant group follow up after the hearing with citations to RCW 18.06.130 and WAC 246-803-300, which require them to notify patients of their statutory scope of practice. The department received a couple of patient testimonials after the hearing where patients thought dry needling was used by physical therapists and not by acupuncturists.

The applicant group also provided background on their requests to add:

- Ear acupuncture to clarify it is included in their scope of practice. They presented background on its use and evidence of efficacy;
- Non-insertion tools. They discussed the benefits of using this modality on children or sensitive or medically fragile individuals. This is already included in their scope of practice and it is included in acupuncture training; and
- Treatment of substance use disorders. They discussed the benefits of acupuncture in this treatment and provided testimonials from patients who were helped by acupuncture.

The applicant group’s proposal to add epinephrine, oxygen, and local anesthetics to their scope of practice included:

- Epinephrine. They compared the expense of epinephrine autoinjectors, which are very costly, to the expense of pre-loaded syringes of epinephrine, which are far less costly. They also stated this would be a pathway for acupuncturists to purchase epinephrine without requiring an authorized health care provider to write a prescription for it.
- Oxygen. They described its use as a medical oxygen cylinder delivered via a mask. This is used for the management of anaphylaxis in the case of an allergic reaction to a substance delivered through point injection therapy. They stated this will also alleviate
the need for a prescription and ensure they can follow proper safety protocols in an emergency.

- Local anesthetics. These are widely used in point injection therapy for the comfort of the patient. They are non-narcotic and non-habit forming.
REVIEW OF PROPOSAL USING SUNRISE CRITERIA

The Sunrise Act, in RCW 18.120.010, states that a health care profession should be regulated or the scope of practice expanded only when:

- Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;
- The public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and
- The public cannot be effectively protected by other means in a more cost-beneficial manner.

The applicant report included both clarifications and expansions of the scope of practice. Since the addition of local anesthetics, oxygen, and epinephrine are the only intended expansions to the acupuncture scope of practice, these are the only changes to which the sunrise criteria apply.

First Criterion: Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public.

The proposal to add local anesthetics, oxygen, and epinephrine for point injection therapy meets this criterion because all three substances carry a risk of harm to patients without proper education and training. The applicant group provided compelling rationale for adding these substances. Local anesthetics are standard practice in point injection therapy and help numb the pain of certain injections for the comfort of the patient. Epinephrine and oxygen increase patient safety by enabling an acupuncturists to respond to an allergic reaction a patient may experiences from injection of a substance.

Second Criterion: The public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability.

The proposal to add local anesthetics, oxygen, and epinephrine for point injection therapy meets this criterion because the public needs assurance of initial and continuing professional ability for the injection of these substances. If the draft bill language is revised as proposed by WANP and WSMA to ensure the use of local anesthetics are limited to point injection therapy and that oxygen is limited to use in an allergic reaction, these are appropriate additions to the acupuncture scope of practice. The draft bill includes language requiring rulemaking to ensure adequate education and training to provide an assurance of professional ability to inject these substances.
Third Criterion: The public cannot be effectively protected by other, more cost-beneficial means.

The proposal to add local anesthetics, oxygen, and epinephrine for point injection therapy meets this criterion. Legislation is the only means of adding these substances to the scope of practice and rulemaking is needed to ensure adequate education and training to perform them safely.
Recommendations

The applicant report included two tracks for scope modification: clarification and expansion of the scope of practice. The criteria in RCW 18.120.010 is applied to requests for regulation by new health professions or currently regulated health professions which seek to substantially increase their scope of practice.

1. The department recommends the expansion of the acupuncture and Eastern medicine scope of practice to include the injection of epinephrine, local anesthetic, and oxygen to the practice of point injection therapy. The department suggests clarifications be added to the draft bill to:
   - Limit local anesthetics to use in point injection therapy, as requested by WSMA and WANP, and agreed upon by WAEMA; and
   - State that the rules must specify when oxygen and epinephrine must be on site and when they are optional, as requested by WSMA for patient safety.

_Rationale:_ This proposal meets the criteria of sunrise review in RCW 18.120.010 as it is a “substantial increase in the scope of practice” for acupuncture and Eastern medicine and would protect patient safety. The applicant report established the increased need for these substances to prevent adverse reactions in patients receiving point injection therapy. The exhibits did not demonstrate that licensees currently have the training or education for the injection of local anesthetic or oxygen. However, the additional rulemaking proposed in the draft bill will help to ensure professional competence. The exhibits did demonstrated there was sufficient training and education for the injection of epinephrine.

2. The department recommends WAEMA, WANP, WSMA, the Washington Orthopedic Association, and other applicable organizations, work together to propose alternate language to ensure the definition of acupuncture and Eastern medicine in RCW 18.06.010(1) clarifies the current scope of practice without expanding it.

_Rationale:_ Public comments from WANP, WSMA, and the Washington Orthopedic Association stating these inadvertently broaden the scope of practice have merit. The applicant group did not assess this increase in scope of practice in the applicant report, and it appears to have been unintended.

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9 WAEMA followed up after the hearing with suggested language for consideration. See Appendices, page A-253.
10 WAEMA followed up after the hearing with suggested language for consideration. See Appendices, page A-252.
The department is not making a recommendation regarding the clarifications to:

- Add ashi points, motor points, trigger points, intramuscular needling, and dry needling to the definition of acupuncture points;
- Add ear therapy;
- Change the definition of acupuncture needles; and
- Add pain management and substance use disorders to the definition of acupuncture and Eastern medicine.

The statutory criteria only apply to requested changes that would “substantially increase the scope of practice” for regulated health professions (RCW 18.120.010(1)) and all requested clarifications are already allowed under the current scope of practice.