



**House
Legislative
Analysis
Section**

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LICENSING PROFESSIONAL COUNSELORS

**Senate Bill 386 (Substitute H-1)
First Analysis (6-8-88)**

RECEIVED

**Sponsor: Sen. Vern Ehlers
Senate Committee: Health Policy
House Committee: Public Health**

Mich. State Law Lib.

THE APPARENT PROBLEM:

In the broad spectrum of mental health services available today, professional counselors focus on the problems of the "normal" person facing such life crises as the death of a family member, divorce, spouse abuse, difficulties with a child, or the loss of a job. Through individual and group counseling, educational procedures, and other therapeutic techniques, counselors are able to provide moderately priced, short-term help to these individuals. Counselors describe themselves as educators who know that people need to keep learning new life skills to cope with society's rapidly changing demands. They know that learning new skills can be the key to a more productive and happier life and can render unnecessary more prolonged psychological treatment. Currently in Michigan, professional counselors are not required to be licensed. Anyone, qualified or not, can offer counseling services. Other providers of mental health services, with whom counselors often work in tandem, such as psychiatrists, psychologists, and social workers, are required to be licensed by the state. Licensure provides the standards by which a person can be judged competent to practice, thereby protecting consumers from harm at the hands of the incompetent. The lack of licensure, moreover, is an impediment to some counselors who find they are unable to practice their profession in some settings not because their skills are not needed or useful but because a program, agency, or institution demands its mental health providers be licensed. Counselors complain that people are also deprived of the use of counselors when Yellow Pages listings include only state certified or licensed mental health providers. Counselors and others believe it to be in the public interest to license counselors.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to add a new part dealing with the licensing of counselors. The bill would take effect January 1, 1989. It is tie-barred to Senate Bill 387 which would amend the State License Fee Act to provide counselor licensure fees. Among other things, the bill would do the following:

- Prohibit, effective June 1, 1989, a person from engaging in the "practice of counseling" unless licensed or otherwise authorized under Article 15 of the code (which deals with health occupations).
- Create a nine-member board of counseling within the Department of Licensing and Regulation. Six members would be counselors, three who are engaged primarily in a counseling practice, two who are engaged primarily in teaching, training, or research, and one who is engaged primarily in administration of counseling services. Two members would be from the general public, and one member would be a member of a statutorily regulated mental health profession (i.e., a psychiatrist, psychologist, social worker, substance abuse counselor, or marriage and family therapist).

- Establish minimum standards for licensure. A professional counselor license could be granted to an individual with a masters or doctoral degree in counseling or student personnel work from a program approved by the licensing board and who had two years of counseling experience under the supervision of a licensed professional counselor (which the board could reduce to one year if an applicant had completed 30 hours of graduate study beyond the masters degree). The counseling experience requirement would not take effect until five years after the bill had taken effect. The licensing board would have to promulgate rules to establish standards to approve only programs that include graduate studies in: research, group techniques, counseling theories, ethics, counseling techniques, counseling philosophy, testing procedures, career development, consulting, practicum, and internship.
- Permit for four years after the bill's effective date the licensing of a person who has two years of experience and holds a masters or doctoral degree in counseling or student personnel from a program that does not meet the board's standards. Further, a special limited license could be issued for the first two years after the bill takes effect to a person with a bachelor's degree and five years of counseling experience. It would be renewable for no more than two years. The limited license would require the person to confine his or her practice to a program of counseling experience under the supervision of a licensed professional counselor. (These are apparently "grandparenting" clauses.)
- Allow the issuance of a limited license to a person with a masters or doctoral degree from a board-approved program to be limited to (and apparently for the purpose of) engaging in a program of counseling experience under the supervision of a licensed professional counselor.
- Prohibit a licensee from performing any acts, tasks, or functions within the practice of counseling unless he or she is trained to perform them.
- Restrict the terms, "licensed professional counselor," "licensed counselor," "professional counselor," and "L.P.C." The bill would not, however, prevent the use of the word "counselor" without the use of the qualifying words.
- Exempt the following from licensing requirements or restrictions on practice:
 - a member of any other profession whose practice may include counseling principles, methods, or procedures from practicing his or her profession as long as he or she is trained in the profession and does not hold himself or herself out as a counselor providing counseling.
 - an ordained member of the clergy if counseling is incidental to his or her religious duties performed under the auspices or recognition of a church, denomination, religious association, or sect that is tax exempt if the

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clergy person does not hold himself or herself out as a licensed counselor.

— a person in the practice of a statutorily regulated profession or occupation if counseling is part of the services typically provided and the individual does not hold himself or herself out as a licensed counselor; the exempt professions include but are not limited to physicians, attorneys, marriage counselors, debt management counselors, social workers, certified social workers, social work technicians, licensed psychologists, limited licensed psychologists, temporary limited licensed psychologists, and school counselors.

— a person performing volunteer services for a public or private nonprofit organization, church, or charity, if the individual was approved by the entity.

— an individual employed by or volunteering to work in a program licensed by the Office of Substance Abuse Services.

- Require a licensee to furnish to a prospective client a professional disclosure statement before engaging in counseling services. The statement would have to contain the licensee's name, business address, and telephone number; a description of the licensee's practice, education, and experience; the fee schedule; and the name, address, and telephone number of the Department of Licensing and Regulation. The disclosure statement would have to accompany the original application for licensure, and any changes made to it would have to be filed with the department within 30 days.
- Specify that the confidential relations between a licensed counselor and a client are privileged communications and nothing in the counselor licensure provisions would require any privileged communication to be disclosed, except as otherwise provided by law. Confidential information could be disclosed only upon consent of the client.
- Define the "practice of counseling" or "counseling" as: "the rendering to individuals, groups, families, organizations, or the general public a service involving the application of clinical counseling principles, methods, or procedures for the purpose of achieving social, personal, career, and emotional development and with the goal of promoting and enhancing healthy self-actualizing and satisfying lifestyles whether the services are rendered in an educational, business, health, private practice, or human services setting." The bill specifies that the practice of counseling does not include the practice of psychology except for those preventive techniques, counseling techniques, or behavior modification techniques for which a counselor had been specifically trained. Counseling also would not include the practice of medicine, such as prescribing drugs or administering electroconvulsive therapy. A counselor could not hold himself or herself out as a psychologist or as a marriage and family counselor.
- The term "counseling principles, methods, or procedures," as used in defining the practice of counseling would mean, under the bill, a developmental approach that systematically assists an individual through the application of any of the following procedures: evaluation and appraisal techniques; exploring alternative solutions; developing and providing a counseling plan for mental and emotional development; guidance; psychoeducational consulting; learning theory; individual and group techniques emphasizing prevention; counseling techniques; behavior modification techniques; and referrals to more appropriate regulated mental health professionals.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency estimated the cost of the bill in the form it passed the Senate at nearly \$95,000, basing its estimates of the cost of the psychology licensure program. The accompanying bill, Senate Bill 387, would establish licensing fees that could more than offset the licensure costs. If all of the estimated 3,000 counselors eligible for licensure applied for licenses, the Senate Fiscal Agency has said, the revenue in the first year would equal \$225,000 and in the second year, \$150,000. The estimates (in an analysis dated 3-8-88) were based on the Senate-passed version of Senate Bill 387, which is in the House Appropriations Committee.

ARGUMENTS:

For:

Licensing professional counselors serves the public interest in several ways. It would establish legally recognized standards of training considered essential for the effective practice of the profession and protect the public from unqualified practitioners. It would make counselors' services available for those who choose to use them in settings where a license or similar credential is necessary or preferred. And it would allow regulators to take action against the license of a counselor for violating the standards of the profession and to guard against those practitioners from other states who have had actions taken against them. Furthermore, licensure would advance the profession. Counselors are now recognized as core providers of mental health services along with psychiatrists, psychologists, social workers, and nurses. Often they work as part of a team with other mental health professionals. Yet alone among them, counselors have no system of licensing, no licensing standards, no minimum educational requirements or work experience requirements. Virtually anyone can hold himself or herself out as a counselor regardless of education and experience. As counselors have assumed new roles and begun working in different settings, new training standards have been developed within the profession. Counselors once worked primarily in educational settings (e.g., guidance counselors), but today they work in mental health agencies, hospitals, clinics, business and industry, and in private practice helping people to develop healthy relationships and lifestyles and to modify problem behaviors. Typically, professionals serving the public directly in this way are credentialled so that the public can be assured of their competence. The fact that counselors are not licensed means they are sometimes excluded from programs, agencies, or institutions that demand licensed professionals on staff, thus denying the public what is often the most cost-effective form of mental health service. Michigan should join the 26 other states in licensing professional counselors.

The bill would also protect the consumer by requiring licensed counselors to provide clients with a professional disclosure statement before counseling begins that describes their training and the nature of their practices. The bill would also guarantee the privileged nature of communications between counselors and clients. The lack of licensure casts a doubt over the existence of any such legal protections.

Against:

Over the past twenty years there has been a change in the way consumer advocates view the licensing of professions. While advertised as a method of protecting the public, licensing also has harmful effects. It works primarily to restrict entry into a profession, raises prices, and restricts consumer choices often without any significant

countervailing benefit. (To the extent licensing results in third-party reimbursement by insurance companies, it also can contribute to higher health care costs.) Licensing should be used prudently and only when there is a significant threat to the consumer's health and safety, when there is no other regulation available, and when consumers cannot make rational choices. No need has been shown for the licensing of counselors; no history of abuses have been cited that this bill would correct. Abuses exist now in the licensed professions and regulators often lack the resources or the will to act. Abuses in the mental health professions, consumer advocates say, tend to result from moral and ethical failures, not deficiencies in educational background or training. Some people, moreover, remain unconvinced of the connection between competence and academic credentials.

Furthermore, the scope of practice provisions in the bill are vague. Some people fear that the bill could prevent people from doing valuable work for which they are qualified (except by the application of new standards by a licensing board) while allowing unqualified people to be licensed. For example, there is concern that the activities of professionals engaged in human resource development programs in business and elsewhere would be threatened. These people should not be put out of business or be made to jump through hoops because their educational backgrounds and training do not meet the standards of a licensing board geared towards the interests of a particular profession.

Response: Fears about other professionals being put out of business are unjustified. The bill specifically permits people trained in their professions who do not hold themselves out to be licensed counselors to continue their work, and it specifically exempts a great number of people from the licensing requirements, including volunteers, substance abuse workers, and the clergy. The current lack of counselor licensure does hurt consumers at present. Ironically, the lack of a license reduces the number of counselors practicing in some settings, as explained above, because credentialing is required by some programs, agencies, and institutions. Consumers are then denied a choice because of the lack of a licensing system.

Against:

Some psychologists have urged that the bill not allow counselors to engage in "behavior modification" unsupervised. This term, they say, is used to describe a specific and very powerful set of techniques with a high potential for abuse when applied by someone not sufficiently trained. The techniques, which involve the systematic application of rewards and punishments to alter behavior, are often used on the unsuspecting, including children and the mentally retarded. It is a controversial practice. Counselors are not sufficiently trained to be trusted with the application of these techniques.

Response: Counselors argue that they are already authorized to use behavior modification (and it is a common part of counselors' practices) by existing statutes and note that with licensure, abuses of behavior modification by counselors can result in sanctions by regulators, which is not the case now. It should be noted that the bill in its current form is a compromise version that takes into account the concerns of representatives of other mental health professionals, including psychologists.

POSITIONS:

Representatives from the Michigan Association of Counseling and Development and the Michigan Association for Specialist in Group Work testified in favor of the bill. (6-2-88)

The Michigan Psychological Associations supports the bill as reported from the House Public Health Committee. (6-6-88)

The Michigan Psychiatric Society does not oppose the bill. (6-7-88)

The Department of Licensing and Regulation has no position. (6-2-88)

The Michigan Consumers Council is opposed to the bill. (6-7-88)

Representatives from Michigan Psychologists in Public Service testified against counselor use of behavior modification techniques. (6-2-88)