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BILL ANALYSIS

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Senate Fiscal Agency

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Lansing, Michigan 48909

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(517) 373-5383

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Mich. State Law

Senate Bill 386 (as enrolled)
Sponsor: Senator Vern Ehlers
Senate Committee: Health Policy
House Committee: Public Health

PUBLIC ACT 421 of 1988

Date Completed: 1-30-89

RATIONALE

Professional counselors are an integral part of approaches used today to help individuals, families, and groups cope with and resolve personal, vocational, and educational problems. Counselors have been characterized as educators who understand that people must learn new skills in order to survive in today's society. Often, counselors work in conjunction with other mental health professionals--such as psychologists, social workers, and psychiatrists. All members of such helping teams are subject to State regulation, except counselors. Despite this recognition within the mental health field of the importance of counselors in treating personal adjustment problems, some people fear that there are persons practicing as counselors who have neither the education nor the skills to perform this service. In order to protect the public, some people believe that the counseling profession should be licensed in this State, as other mental health professions already are regulated.

CONTENT

The bill would amend Article 15 of the Public Health Code, which governs health care professionals, to:

- Establish the Michigan Board of Professional Counseling within the Department of Licensing and Regulation.
- Prohibit a person from engaging in the practice of counseling unless licensed or authorized under the Code, effective January 1, 1990.
- Prohibit a licensee from performing any acts, tasks, or functions within the practice of counseling unless he or she was trained to do so.
- Set requirements and provide for the issuance of a professional counselor license or a limited license.
- Require that a professional disclosure statement be furnished to a client before a counselor engaged in counseling services.
- Exempt from the bill's provisions certain persons including those engaged in a "statutorily regulated profession or occupation", an ordained clergy member, and volunteers with public or private nonprofit organizations, charities, and churches.
- Provide for confidentiality between a client and a licensed

professional counselor or a limited licensed counselor.

The bill would take effect January 1, 1989.

Board of Professional Counselors

The Michigan Board of Counseling would be created in the Department of Licensing and Regulation and would consist of nine voting members who would have to meet the general requirements for boards set forth in Part 161 of Article 15. Six members of the Board would have to be engaged in the practice of counseling and would consist of: three members who were engaged primarily in providing counseling techniques, behavior modification techniques, or preventive techniques to clients; two members who were engaged primarily in teaching, training, or research in counseling; and one member who was engaged primarily in the administration of counseling services. Two members would be required to represent the general public. One member would have to be a "statutorily regulated mental health professional", meaning any of the following: a psychiatrist, psychologist, substance abuse counselor, marriage and family therapist, or social worker. The terms of office for board members, except those appointed to fill vacancies, would expire four years after appointment on June 30.

Professional Counselor License

The Board could grant a professional counselor license to an individual who was or did all of the following:

- Was at least 21 years of age.
- Had received a master's or doctoral degree in counseling or student personnel work in a program approved by the Board. The Board would be required to promulgate rules to establish standards to approve only those programs that included graduate studies in the following areas: research, group techniques, counseling theories, ethics, counseling techniques, counseling philosophy, testing procedures, career development, consulting, practicum, and internship.
- Had at least two years of counseling experience under the supervision of a licensed professional counselor. The Board could decrease the required length of counseling experience to one year if an applicant had completed 30 hours of graduate study in counseling beyond the masters degree. An applicant could not be licensed before completing one year of counseling experience under the supervision of a licensed professional counselor. This provision would take effect January 1, 1994.

By January 1, 1993, the Board could grant a license to a person who met the bill's requirements as to age, had two years of experience, and held a master's or doctoral degree in counseling or student personnel work that did not meet the educational requirements of the bill.

Limited License

Until January 1, 1991, the Board could grant a limited license to a person who had received a bachelor's degree and had practiced counseling for at least five years. The limited license could be renewable for no more than two years. A limited license would have to require that a person confine his or her practice to a program of counseling experience under the supervision of a licensed professional counselor. The Board could grant a limited license to a person who met both of the following criteria:

- Was at least 21 years of age.
- Had received, from an accredited college or university approved by the Department, a master's or doctoral degree in counseling or student personnel work in a program approved by the Board. The Board could approve only those programs that included graduate studies in the following areas: research, group techniques, counseling theories, ethics, counseling techniques, counseling philosophy, testing procedures, career development, consulting, practicum, and internship.

A limited license would have to require that the person confine his or her practice to a program of counseling experience under the supervision of a licensed professional counselor.

Board Membership

For a board created on or after January 1, 1989, the Governor could appoint, as members of the board who were required to be licensed or registered under the bill, individuals who met either of the following requirements:

- Were certified or otherwise approved by a national organization that certified or approved individuals in the profession to be licensed or registered by the board.
- Had actively practiced the profession licensed or registered by the board or taught in an educational institution which prepared applicants for licensure or registration in that profession, or a combination of both, for at least two years immediately preceding the appointment.

Within three years after the effective date of an act that created a board, each individual appointed under the bill would have to be licensed or registered by the board.

Disclosure Statement

A licensee would be required to furnish a professional disclosure statement to a prospective client before engaging in counseling services. The statement would have to contain:

- The licensee's name, business address, and telephone number.
- A description of that licensee's practice.

- A description of the licensee's education and experience.
- A counseling fee schedule.
- The name, address, and telephone number of the Department.

The disclosure statement would have to accompany the original application for licensure. Any changes in the disclosure statement would have to be filed with the Department within 30 days after the changes were made.

Exemptions

The bill specifies that Article 15 would not limit a person in, nor prevent a person from, the practice of a "statutorily regulated profession or occupation" if counseling were part of the services provided by that profession or occupation, and the individual did not claim to be a counselor regulated under Article 15. A "statutorily regulated profession or occupation" would include, but not be limited to: a physician, attorney, marriage counselor, debt management counselor, social worker, certified social worker, social work technician, licensed psychologist, limited licensed psychologist, temporary limited licensed psychologist, and school counselor.

The bill would not apply to:

- An ordained member of the clergy if counseling were incidental to his or her religious duties performed under the auspices or recognition of a church, denomination, religious association, or sect that had tax exempt status pursuant to the Internal Revenue Code, if the member of the clergy did not hold himself or herself out as a counselor licensed under Article 15.
- A person who performed volunteer services for a public or private nonprofit organization, church, or charity if the person were approved by the organization or agency for which the services were rendered.
- An individual who was employed by or who volunteered to work in a program licensed by the Office of Substance Abuse Services.
- A member of any other "profession" whose practice could include counseling principles, methods, or procedures as long as he or she was trained in that profession and did not hold himself or herself out as a counselor providing counseling. "Profession" would include, but not be limited to, the fields of human resources development and organizational development.

The bill would not prohibit the use of "counselor" without the qualifying words "licensed" or "professional" used in conjunction with "counselor", except as otherwise provided by law.

Confidentiality

The confidential relations and communications between a licensed professional counselor or a limited licensed counselor and a client would be privileged communications. Nothing in the bill could require any privileged information to be disclosed, except as otherwise provided by

law. Confidential information could be disclosed only upon consent of the client.

Definitions

"Practice of counseling" or "counseling" would mean 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 were rendered in an educational, business, health, private practice, or human services setting. The practice of counseling would not include the practice of medicine, such as prescribing drugs or administering electroconvulsive therapy; or, the practice of psychology except for those preventive techniques, counseling techniques, or behavior modification techniques for which the licensed professional counselor or limited licensed counselor had been specifically trained. A counselor could not hold out himself or herself as a psychologist as defined in the Code (MCL 333.18201), or as a marriage and family counselor providing marriage counseling pursuant to the Occupational Code.

"Counseling principles, methods, or procedures" would mean a developmental approach that systematically assisted a person through the application of any of the following procedures:

- Evaluation and appraisal techniques. "Appraisal techniques" would mean selecting, administering, scoring, and interpreting instruments and procedures designed to assess a person's aptitudes, interests, attitudes, abilities, achievements, and personal characteristics for developmental, and not psychodiagnostic, purposes.
- Exploring alternative solutions.
- Developing and providing a treatment plan for mental and emotional development.
- Guidance, psychoeducational consulting, learning theory, individual and group techniques emphasizing prevention, counseling techniques, behavioral modification techniques, and referrals. Referral would include determining the need for referral to one or more statutorily regulated mental health professionals whose expertise, skills, and competence were appropriate to the individual's problems, informing the person of the referral, and communicating as appropriate with the professional to whom the individual had been referred.

MCL 333.16131 et al.

FISCAL IMPACT

The estimated cost for the program would be about \$95,000 annually and would be allocated as follows:

Per diem (9 members) \$50/diem x 9 members x 8 meetings	\$ 3,600
Travel and miscellaneous \$80/member x 9 members x 8 meetings	5,760
1 typist/clerk III (\$10.14/hr x 2,088 hrs.)+ 37.5%	= 29,112
1 Dept. Analyst VII (\$14.83/hr x 2,088 hrs.)+ 37.5%	= 42,580
Phone equipment and charges	= 1,000
Building rental (or outstate exam sites)	= 500
Consulting services (expert witness, micro film processing)	= 7,000
Postage	= 2,500
Printing and office supplies	= 2,500

	\$94,552

These estimated costs are based on the costs for the operation of a similar program, licensure of psychologists, which covers about 3,400 psychologists and has a structure and requirements similar to the proposed professional counselor licensing program.

According to the Michigan Association of Counseling and Development, there are an estimated 3,000 professional counselors who would be affected by the licensing requirements of Senate Bill 386.

ARGUMENTS

Supporting Argument

There are no legally recognized standards in Michigan by which a consumer can differentiate between qualified professional counselors and unqualified persons purporting to be counselors. There is no requirement that these persons have completed any course work, supervised practicum, supervised work experience, or examinations in order to provide counseling services. Thus, regardless of their level of education, training, or experience, persons can hold themselves out to the public as a counselor. Furthermore, there is no way to prevent counselors whose licenses had been suspended in another state from setting up practice in Michigan. If the bill were enacted, those counselors would have to meet licensing requirements in this State. Currently, a consumer harmed by a person claiming to be a counselor has no recourse, except through the courts, since there is no State board to regulate the practice of counseling. In fact, protecting the public from unqualified health practitioners has become a national concern. U.S. Senator John Glenn, of Ohio, reportedly had introduced legislation to establish a national computer system to track health care providers whose licenses have been suspended or revoked in any state to prevent these persons from establishing a practice in another state. This system, however, would work only with licensed practitioners. The public is best served when minimum standards are established and there is a recognized authority to bring disciplinary action.

Supporting Argument

This legislative action reflects an increase in activity throughout the health care field to establish professional credentials: Virginia was the first state to license counselors in 1976, and since then, 23 other states have enacted counselor licensure laws. Increased regulation has developed in response to public concerns about professional competence, and the

establishment of credentials has become the standard by which to judge professional competence. Furthermore, hospitals, agencies, and institutions have adopted stricter standards for credential requirements. Not only does licensure protect the public, it also grants the counseling profession credibility equal to that of other mental health professions.

Supporting Argument

A consumer's freedom of choice is hampered when counselors are not licensed. Consumers of both mental and physical health care services should have the option of selecting the treatment that best suits them and their situation. When agency guidelines mandate that only State-regulated professionals be employed, however, or that a hospital grant privileges only to licensed professionals, clients of that agency or patients in that hospital are denied access to a professional counselor, even if that would be in their best interest, because counselors are not licensed in Michigan.

Supporting Argument

Since there is no law regulating the counseling profession, it is argued that there is no confidentiality or privileged communication for clients served by a counselor. The privilege that currently exists between a physician and patient, an attorney and client, and a priest and penitent does not exist between a counselor and client. Thus, a counselor could be called to testify as to the communication he or she had with a client. Because there is no protection in the law, a counselor also could be required to reveal a confidence entrusted to him or her by a client. The bill would protect the confidentiality of the relationship and communications between a counselor and a client.

Opposing Argument

During the past 20 years, there has been a change in the way consumer advocates view the licensing of occupations. While licensing is touted as a method of protecting the consumer, licensing is not necessarily a benign endeavor. Licensing limits the ability of everyone, not just the incompetent, to enter a profession. The ability, or inability, to enter a market affects the number of practitioners, which determines the price consumers must pay. Regulation of occupations limits a consumer's choices, raises costs, increases income for the practitioner, and restricts the mobility of practitioners due to the variety and severity of standards. Licensing should be used prudently and only when there is a significant threat to the public's health and safety, when there is no other regulation available, and when consumers cannot make rational choices. Furthermore, some people argue that there is little relationship between competence and academic credentials. Therefore, it is inappropriate to use licensing as a method to identify competence.

Legislative Analyst: L. Arasin
Fiscal Analyst: J. Schultz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.