House Legislative Analysis Section

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IMPAIRED HEALTH PROFESSIONALS

House Bill 4712 (Substitute H-1)
First Analysis (6-11-90)

Sponsor: Rep. David M. Gubow
Committee: Public Health

THE APPARENT PROBLEM:

Currently, under the Public Health Code, if a licensed or registered health professional is found by his or her licensing board to be personally disqualified to practice because of substance abuse or mental incompetence, the board can take a number of disciplinary actions ranging from probation to fines and suspension or revocation of the practitioner's license or registration. However, there are no provisions in law which allow the state to take nondisciplinary action with regard to health professionals who are impaired because of their use of drugs (including alcohol) or because of mental illness. Legislation has been introduced to allow nonpunitive, treatment-oriented approaches to deal with impaired health professionals.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to create a "health professional recovery committee" to address the problem of impaired health professionals. The bill would require health professionals licensed or registered under the code who suspected that other licensees or registrants were impaired to report that fact to the Department of Licensing and Regulation. The bill also would exempt from liability both those who did and who did not report, as well as those who helped the committee in carrying out its duties. Finally, the bill would add the committee's investigations and proceedings to the existing list of exemptions from the physician-patient privilege as defined in the Revised Judicature Act.

Definition of impairment. The bill would define "impaired" or "impairment" to mean the inability of a health professional to practice competently due to his or her use of drugs (including alcohol) or because of mental illness. The bill specifically mentions, but does not limit impairment to, substance abuse (as defined in the health code), mental illness as defined in the Mental Health Code, and chemical dependency, which the bill defines as "a group of cognitive, behavioral, and physiological symptoms that indicate that an individual has a substantial lack of or no control over the individual's use of one or more psychoactive substances."

The Health Professional Recovery Committee. The bill would create in the Department of Licensing and Regulation (DLR) a "health professional recovery committee" composed of members who had expertise in addictive behavior or mental illness. More specifically, the board would consist of two public members (appointed by the director of the Department of Licensing and Regulation), one of whom would have to have specialized training or experience in addictive behavior, and a health professional appointed by each of the licensing boards (currently there are 14) and the physician's assistants task force, each of whom would have to have education, training, and clinical expertise in addictive behavior or mental illness. The director of the DLR or his or her representative would be an ex officio member of the committee without a vote. Committee members would be appointed for two year terms, could not serve for more than two terms, and could not, at the time of their appointment, be members of the Health Occupations Council, a licensing board, or a task force.

The bill would bring the committee (and committee members) under all of the requirements currently imposed on the Health Occupations Council, licensing boards, and task forces (for example, regarding minimum age of members, adoption of bylaws, election of officers, and so on), and would require the committee to meet at least quarterly.

The committee would be responsible for:

- establishing the general components of the health professional recovery program and a way to monitor health professionals who might be impaired;
- developing and implementing (a) criteria for identifying, assessing, and treating and (b) ways of evaluating the continuing care or aftercare of impaired health professionals;
- developing a way of, and criteria for, referring (with the consent of the individual involved) health professionals who might be impaired to professional associations for help; and
- reporting each year to each of the licensing boards on the status of the health professional recovery program (including statistical information on the level of participation of each health profession in the program).

Departmental duties. The Department of Licensing and Regulation would be required to contract with private consultants to help the committee administer the health professional recovery program, including the development and implementation of the criteria for identifying, assessing, and treating or referring to professional associations those health professionals who might be impaired, as well as developing the way to evaluate the continuing care or aftercare of such health professionals. The contract would have to require that the private consultants immediately report to the DLR anything that indicated an impaired health professional might be a threat to the public health, safety, or welfare, and if the information indicated that the practitioner had violated the provisions of the bill (or rules promulgated under the bill), the department could review his or her permanent historical record (which the DLR keeps on each licensee) and take action as prescribed under the health code if the department received further allegations that a practitioner has violated the health code.

The Health Professional Recovery Program. If the Department of Licensing and Regulation had reasonable cause to believe that a health professional were impaired, it would have to notify the health professional recovery committee, which would then have its private consultant investigate whether or not the practitioner was impaired.

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If the consultant found that a health professional was impaired, the health professional recovery committee could accept the practitioner into the health professional recovery program if (a) the practitioner acknowledged his or her impairment and (b) he or she voluntarily withdrew or limited his or her scope of practice and agreed to participate in a treatment plan. If the committee believed that a practitioner had not satisfactorily complied with his or her treatment plan, it would have to report that to the DLR. The bill would make it a felony for a health professional undergoing treatment or the person treating him or her to intentionally say that the practitioner had successfully completed treatment when that was not true.

Confidentiality. The bill would make confidential the identities both of people reporting impaired health professionals and of impaired health professionals who participated in the health professional recovery program. The identity of a participating impaired health professional would not be subject to disclosure either under subpoena or under the Freedom of Information Act unless he or she failed to comply with his or her treatment plan or lied about successfully completing the plan.

Expungement. The bill would require the Department of Licensing and Regulation to destroy all records regarding the impairement of a health professional (including his or her participation in a treatment plan) five years after the practitioner successfully completed a treatment plan under the health professional recovery program. Records of violations of the bill would not be expunged.

Reporting and liability. The bill would require people licensed or registered under the health code to report to the DLR other licensees, registrants, or applicants whom they had reasonable cause to believe were impaired. (Reports filed with the department's private consultant would be treated as reports to the department.) However, licensees or registrants who failed to report would not be civilly liable for any damages resulting from the failure to report, and those who complied with the reporting requirements in good faith would be neither civilly nor criminally liable for their compliance. Health professionals in a bona fide professional-patient relationship with an impaired health professional would not be required to report.

MCL 333.16103 et al.

FISCAL IMPLICATIONS:

The Department of Licensing and Regulation estimates that the first year of the program would cost $450,000, and would require additional annual appropriations. The first year costs include both the contract costs as well as the costs for the three additional staff positions that the department believes would be necessary in order to oversee the contract and to provide support to the health professional recovery committee. (5-30-90)

ARGUMENTS:

For:

Right now, the only legally recognized way of dealing with chemically or mentally impaired health professionals is punitive: a practitioner who is identified as being impaired is offered not rehabilitation, but possible loss of his or her livelihood and professional standing. Several problems result from the lack of legislation allowing rehabilitation as an alternative to punishment. First, the threat of loss of licensure or regulation encourages impaired professionals to stay "underground" as long as possible (and encourages professional peers to avoid reporting their impaired colleagues), which means there can be a dangerously long period of time in which the professional practices legally but perhaps unsafely. Secondly, an impaired health professional who has already sought treatment and who is ready to safely return to practice, can still receive ("after the fact") a psychologically devastating sanction against his or her license or registration. Thirdly, given present budget constraints and lowered staffing of state investigative agencies, an investigation can take from 18 to 24 months or longer, during which time the health care professional can continue to practice and pose a possible threat to public safety. And finally, given the shortage of health care professionals generally (and some professionals, such as nurses, in particular), the existing process can remove from practice many practitioners who could receive treatment and who could return to safe practice under supervision and monitoring.

The non-punitive nature of the bill, as well as the mandatory reporting requirements, should improve the identification of chemically dependent or mentally ill health professionals, while the promotion of interventions that could lead to treatment may significantly reduce the amount of time that a health professional may practice while impaired.

For:

Who cares for the caretakers? It is widely recognized today that people who are chemically or mentally impaired need help, not punishment. While the public continues to need protection from health professionals whose impairement can result in unsafe professional practices, nevertheless health professionals who are chemically or mentally impaired also need help, not punishment. Most professionals, once they begin treatment, can practice safely with supervision and monitoring.

Several states (including Ohio, Florida, Texas, New York, Massachusetts and California) have already passed legislation that supports the treatment and rehabilitation of impaired professionals. It is time for Michigan to join these states in the enlightened approach to the problem of impaired health professionals.

The bill would protect the public from unsafe practitioners while taking an enlightened approach to problems of chemical dependency and mental illness among health professionals. For, while recognizing the potential for rehabilitation of health professionals who are chemically dependent or mentally ill, the bill would not interfere with licensing boards' ability to pursue licensing or registration actions against health professionals who violated the Public Health Code, should this prove necessary.

Against:

A number of health professions already have recognized the problems of chemical dependency and mental illness that some of their members face, and have set up special committees or task forces to help their impaired colleagues. While there should be a legally recognized way for the state to take non-punitive action to help impaired health professionals, this should in no way weaken or interfere with the professions' existing — and in some cases long-standing — efforts to help their own.

Response: The bill does require the health professional recovery committee to "develop a mechanism and criteria for the referral of a health professional who may be

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impaired to a professional association when appropriate for the purpose of providing assistance to the health professional," though it does not require the committee to refer impaired professionals back to their professional associations.

POSITIONS:

The Department of Licensing and Regulation supports the bill provided that it is given the necessary appropriations. (5-30-90)

The Michigan Dental Association supports the bill. (6-8-90)

The Michigan Council of Dental Specialty Presidents has no position on the bill. (6-8-90)

The Michigan State Medical Society supports the bill. (6-8-90)

The Michigan Nurses Association supports the bill. (6-8-90)

The Michigan Licensed Practical Nurses Association has not yet taken a position on the bill. (6-8-90)