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BILL ANALYSIS

Senate Fiscal Agency

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Lansing, Michigan 48909

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(517) 373-5383

House Bill 4712 (Substitute H-1 as reported with amendments)

Sponsor: Representative David M. Gubow

House Committee: Public Health

Senate Committee: Health Policy

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RATIONALE

If a licensed or registered health professional is found by a licensing or registration board to be unfit to practice because of substance abuse or mental incompetence, the Public Health Code provides that the board can take a number of disciplinary actions, which range from probation to suspension or revocation of the license or registration. There are no provisions in the law, however, that allow for nondisciplinary action to be taken with regard to health professionals who are impaired because of their drug use or mental illness. Some people believe that there should be alternative measures provided in the Code to allow nonpunitive, treatment-oriented approaches to be taken in dealing with impaired health professionals.

CONTENT

The bill would amend the Public Health Code to:

- Create the Health Professional Recovery Committee in the Department of Licensing and Regulation for the monitoring, identification, assessment, and treatment of health professionals who could be "impaired".
- Require the Department to contract with a private consultant to assist the Committee in the administration of the Health Professional Recovery Program.
- Provide for the admission of a health professional into the Program, under certain circumstances, including the health professional's withdrawal from or limitation of the scope of

practice.

- Require the consultant to report to the Department a person who did not comply satisfactorily with a treatment plan.
- Specify that a person would be guilty of a felony for falsely representing the completion of a treatment plan.
- Provide for the confidentiality of a person who submitted information on the suspected impairment of a health professional and of a person who participated in the Health Professional Recovery Program, unless that health professional failed to complete the Program or falsely represented completion of the Program.
- Require a licensed or registered health professional, who had reasonable cause, to report to the Department the suspected impairment of another licensee, registrant, or applicant.
- Provide that a licensee or registrant, who did not make a report, would not be liable for civil damages resulting from the failure to report suspected impairment.
- Provide that a licensee who complied in good faith with the bill would not be liable for civil damages or subject to criminal prosecution.
- Exempt the Committee's investigations or proceedings from the physician-patient privilege created in the Revised Judicature Act.

H.B. 4712 (9-12-90)

The bill is tie-barred to House Bills 5912 and 5913, which would amend the State License Fee Act to establish the Health Professions Regulatory Fund in the State Treasury, and to permit the Department of Licensing and Regulation to increase certain fees as well as specify increases in certain fees, respectively.

Impairment

The bill would define "impaired" or "impairment" to mean the inability or immediately impending inability of a health professional to practice his or her health profession in a manner that conformed to the minimum standards of acceptable and prevailing practice for that health profession due to the health professional's "substance abuse", "chemical dependency", or "mental illness", or the health professional's use of drugs or alcohol that did not constitute substance abuse or chemical dependency. "Chemical dependency" would mean a group of cognitive, behavioral, and physiological symptoms that indicated that an individual had a substantial lack of or no control over his or her use of one or more psychoactive substances. "Mental illness" would mean the term as defined in the Mental Health Code, which defines "mental illness" as a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life. "Substance abuse" would mean the term as defined in the Public Health Code, which defines "substance abuse" as the taking of alcohol or other drugs at dosages that place an individual's social, economic, psychological, and physical welfare in potential hazard or to the extent that an individual loses the power of self-control as a result of the use of alcohol or drugs, or while habitually under the influence of alcohol or drugs, endangers public health, morals, safety, or welfare.

Health Professional Recovery Committee

The Health Professional Recovery Committee would be created in the Department of Licensing and Regulation and would consist of the following appointed and voting members:

- One health professional who would be appointed by each licensing board created under Article 15 (which regulates health occupations), including the physician's

assistants task force, in consultation with the appropriate professional associations.

- Two public members, one of whom had specialized training and/or experience in addictive behavior, who would be appointed by the Director of the Department.

The Director or his or her representative who would serve as an ex officio member, without a vote. The Director and the boards could not appoint an individual who was at the time of appointment a member of the Health Occupations Council or a board or task force. The health professionals appointed by the licensing boards would be required to have education, training, and clinical expertise in addictive behavior and/or mental illness.

The bill would provide for terms of office and the filling of a vacancy on the Committee. The bill also would bring the Committee under the Public Health Code's requirements (such as the minimum age of members, adoption of bylaws, and election of officers) that are imposed on the Health Occupations Council, licensing boards, and task forces. The Committee also would be required to meet at least quarterly.

Committee Responsibilities

The Committee would be required to do all of the following:

- Establish the general components of the Health Professional Recovery Program and a mechanism for monitoring health professionals who could be impaired.
- Develop and implement criteria for the identification, assessment, and treatment of health professionals who could be impaired, subject to the bill's provisions on evaluating information on the possible impairment of a health professional and on the acceptance of a health professional into the Program.
- Develop and implement mechanisms, in conjunction with the Health Professional Recovery Program consultants, for the evaluation of continuing care or aftercare plans for health professionals who could be impaired.
- Develop a mechanism and criteria for the referral of a health professional who could be impaired to a professional association

when appropriate in order to provide assistance to the health professional. The criteria would have to require that a referral not be made without the consent of the professional.

- Report annually to each licensing board on the status of the Health Professional Recovery Program. The report would have to include, at a minimum, statistical information on the level of participation of each health profession in the Program. The report could include recommendations for changes in the Program and for participation by the boards, professional associations, substance abuse treatment and prevention programs, and other appropriate agencies.

Consultant

The Department would be required to enter into a contract with a private entity to act as a consultant to assist the Committee with the administration of the Health Professional Recovery Program, including the development and implementation of criteria for identifying, assessing, and treating health professionals who could be impaired as well as the development and implementation of mechanisms for the evaluation of continuing care or aftercare plans for health professionals who could be impaired.

The contract would have to require the private entity to report immediately to the Department any circumstances that indicated that an impaired health professional could be a threat to the public health, safety, or welfare. The bill specifies that failure to report would be a cause for termination of the contract, but would not create liability for damages in a civil action or result in prosecution in a criminal proceeding.

Health Professional Recovery Program

If the Department had reasonable cause to believe that a health professional could be impaired, the Department would be required to transmit the information to the Committee. Upon receiving the information, the Committee would be required to have an evaluation of the circumstances conducted by the consultant to determine whether the health professional could be impaired.

If information received by the Department from the consultant indicated that the health professional involved had violated licensing provisions of Article 15 or rules promulgated under the article, the Department could proceed under the Public Health Code's provisions on maintenance of a permanent historical record for each licensee (MCL 333.16211) and the provisions on notifying the Department on suspected violations of the Code's licensing provisions (MCL 333.16231).

If the Department determined that a health professional could be impaired, the Committee could accept the health professional into the Health Professional Recovery Program, if both of the following requirements were met: the health professional acknowledged his or her impairment, and the health professional voluntarily did both of the following:

- Withdrew from or limited the scope of his or her practice. To comply with this provision, the health professional could request the limitation of his or her license under the Code's provisions for granting a limited license (MCL 333.16182).
- Agreed to participate in a treatment plan, pursuant to the bill.

If a health professional did not comply satisfactorily with the treatment plan, as determined by the Committee, the Committee would have to report that fact to the Department. A health professional who participated in a treatment plan under the Health Professional Recovery Program and a person who treated the health professional under the treatment plan could not falsely represent, either individually or together, that the health professional had successfully completed the treatment plan. A person would be guilty of a felony if he or she intentionally violated this provision.

Confidentiality

The bill specifies that the identity of a person who submitted information to the Committee or the Department regarding the suspected impairment of a health professional would be confidential. In addition, the identity of a health professional who participated in the Health Professional Recovery Program would be confidential and would not be subject to

disclosure under discovery or subpoena or the Freedom of Information Act, unless the health professional failed to comply satisfactorily with a treatment plan prescribed under the Program and unless the health professional violated the bill's provisions prohibiting the false representation that a health professional had successfully completed a treatment plan.

If a health professional successfully completed a treatment plan under the Program, as determined by the Committee, the Department would be required to destroy all records pertaining to the impairment of the health professional, including records pertaining to the health professional's participation in the treatment plan, upon the expiration of five years after the completion date. The bill specifies that this provision would not apply to records pertaining to a violation of Article 15 or a rule promulgated under the article.

Reporting and Liability

Except as otherwise provided in the bill, a licensee or registrant who had reasonable cause to believe that another licensee, registrant, or applicant was impaired would have to report that fact to the Department. A report filed with the Committee or with the Program consultant would be considered filed with the Department. The bill specifies that a licensee or registrant who did not report would not be liable in a civil action for damages resulting from the failure to report. The bill also specifies that these provisions would not apply to a licensee or registrant who was in a bona fide health professional-patient relationship with a licensee, registrant, or applicant believed to be impaired. In addition, a licensee, who in good faith complied with these provisions, would not be liable for damages in a civil action or subject to prosecution in a criminal proceeding as a result of compliance.

The bill also specifies that the physician-patient privilege, created in the Revised Judicature Act, would not apply in an investigation or proceeding of the Committee. Unless expressly waived by the individual to whom the information pertained, the information obtained would be confidential and could not be disclosed, except to the extent needed for the proper functioning of the Committee.

MCL 333.16103 et al.

SENATE COMMITTEE ACTION

The Senate Committee on Health Policy adopted amendments to tie-bar the bill to House Bills 5912 and 5913 and to provide for the termination of a contract between the Department of Licensing and Regulation and a private entity that acted as a consultant to the Department in administering the Health Professional Recovery Program, if the consultant failed to report to the Department circumstances concerning a health professional who could be a threat to the public health, safety, and welfare.

FISCAL IMPACT

The bill would cost the State approximately \$500,000 per year and would have no fiscal impact on local government.

Assuming that the 17-member Health Professional Recovery Committee (HPRC) met quarterly, the annual cost of the HPRC to the State would be approximately \$6,800. In addition, the Department of Licensing and Regulation estimates that it would need 3.0 new FTEs to assist the HPRC. The annual cost of these 3.0 FTEs would be approximately \$143,100.

Finally, the bill would require the Department to contract with a consultant to administer the Health Professional Recovery Program. The Department estimates that the contract would cost \$350,000 annually.

The bill is tie-barred to House Bills 5912 and 5913, both of which would increase health professionals license fees to pay for the Program.

ARGUMENTS

Supporting Argument

The only legally recognized way of dealing with chemically or mentally impaired health professionals is punitive. Thus, a health professional who is identified as being impaired is not offered rehabilitation, but possible loss of his or her livelihood or professional standing. Several problems result from the lack of alternatives to these punitive measures. Impaired health professionals may be reluctant

to seek help, and professional peers may be hesitant to report their impaired colleagues, because of the fear that the impaired professional could lose his or her licensure or registration. Thus, the impaired professional may continue to practice, which can place his or her patients and clients at risk. In addition, an impaired health professional who has sought treatment and is able return to his or her practice, could still face a sanction against his or her license. Furthermore, given the shortage of practitioners in certain medical specialties, the current process can remove from the health profession many persons who, with treatment, could return and practice their profession. Since the bill is nonpunitive in nature, it could result in improved identification of chemically dependent and mentally impaired health professionals and aid in the promotion of interventions that could lead these persons to treatment.

Supporting Argument

It is widely recognized that people who are chemically or mentally impaired need help, not punishment. While the public should be protected from health professionals whose impairment could result in unsafe professional practices, these health professionals should be encouraged to seek treatment. The bill would protect the public from unsafe practitioners while taking an enlightened approach to problems of chemical dependency and mental impairment among health professionals. Several states reportedly have passed legislation similar to House Bill 4712 (H-1) that supports the treatment and rehabilitation of impaired professionals. Furthermore, the bill would not interfere with the licensing and registration boards' ability to pursue licensing or registration sanctions, when necessary, against health professionals who have violated the Public Health Code.

Legislative Analyst: L. Arasim

Fiscal Analyst: J. Schultz

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