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MOVE MARRIAGE & FAMILY THERAPISTS TO HEALTH CODE

House Bill 4317 as introduced
First Analysis (2-28-95)

Sponsor: Rep. Dan Gustafson
Committee: Regulatory Affairs

THE APPARENT PROBLEM:

Two laws currently regulate various professions and occupations in Michigan. The Public Health Code regulates fifteen health care professions, while the Occupational Code regulates 28 other occupations, professions, and business entities through 23 regulatory boards. Both codes were the result of extensive revisions of earlier, and separate, regulatory statutes. For example, all of the twelve health care professions (including the medical and osteopathic subfield of physician's assistants) regulated under the original 1978 health code revision (two additional professions, counseling and occupational therapy, were added in 1988) had been regulated under their own statutes, with dates of these laws ranging from as long ago as 1885 for pharmacies to as recently as 1976 for physician's assistants. Similarly, the 1980 Occupational Code brought the regulation of, generally, commercial and non-health care professions and occupations under a single law instead of separate statutes.

The decision whether to move certain occupations and professions under the Public Health Code was discussed during the five years of work leading up to the 1978 statute. More specifically, in his Commentary on the Michigan Public Health Code, Richard Strichartz identifies six professions or occupations, later included under the 1980 Occupational Code revision, that were considered - - and rejected -- for inclusion under the health code. They were (1) social workers, (2) morticians, (3) marriage counselors, (4) "myofunctional therapists," (5) audiologists and speech language pathologists, and (6) respiratory therapy personnel. With the exception of morticians and marriage counselors, which the group drafting the health code revision specifically decided not to include under the new code, all of these other professions and occupations were supposed to have been studied by the now-defunct Health Care Occupations Council with a view to recommending the appropriateness of including them under the new health code. Though

at least some of these studies reportedly were carried out, they also apparently have had little or no effect on actual regulation of various health care and health-related occupations and professions. Over the years, both social workers and marriage and family therapists have sought to be moved from regulation under the Occupational Code to regulation under the Public Health Code. Marriage and family therapists have again asked for legislation implementing such a move.

BACKGROUND INFORMATION:

The 1978 Public Health Code. The rewritten Public Health Code of 1978 originally regulated 12 health care professions, plus the medical and osteopathic subfield of physician's assistants. (A health profession "subfield" is an area of practice within a licensed health profession that requires less comprehensive knowledge and skill than is required to practice the full scope of practice. Under the health code, subfields are governed by their own task forces rather than by a board.) In 1988, two more professions were added to the list of health care professions regulated under the health code (counseling, by Public Act 421, and occupational therapy, by Public Act 473), for a total of 14 professions plus the subfield of physician's assistants. The health professions and subfields currently regulated under the Public Health Code are as follows:

- * Chiropractic
- * Counseling
- * Dentistry
- * Medicine
- * Nursing

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- * Occupational therapy
- * Optometry
- * Osteopathic medicine and surgery
- * Pharmacy
- * Physical therapy
- * Podiatric medicine and surgery
- * Psychology
- * Sanitarians
- * Veterinary medicine

The 1980 Occupational Code. The Occupational Code has 23 regulatory boards governing the following 23 professions or occupations:

- * Accountancy
- * Real estate appraisers
- * Architects
- * Athletic Control
- * Barbers
- * Residential builders
- * Collection agencies
- * Carnival/amusement safety
- * Community planners
- * Cosmetology
- * Foresters
- * Hearing aid dealers
- * Landscape architects
- * Marriage and family therapists
- * Mortuary science
- * Nursing home administrators

- * Personnel agencies
- * Professional engineers
- * Polygraph examiners
- * Professional surveyors
- * Real estate brokers and dealers
- * Ski area safety
- * Social workers

Mental health care providers. There are a number of different kinds of mental health care providers who treat people for a range of mental conditions, from severe mental illnesses to temporary conditions involving such common life crises as divorce, death of a loved one, the loss of a job, and so forth. Mental health care providers may hold medical or academic degrees, and include psychiatrists, psychologists, social workers, and various kinds of counselors. According to one estimate, about one out of every three people -- some 80 million Americans -- have had some experience with psychotherapy, with about a third seeing psychiatrists, another third seeing psychologists, and the remainder seeing clinical social workers, clinical mental health counselors, and pastoral counselors.

Psychiatrists are physicians (whether MDs or DOs) who may prescribe medications for their patients in addition to, or instead of, treating them by means of psychotherapy. In Michigan, as physicians, psychiatrists are licensed under the Public Health Code. Psychologists hold academic, rather than medical or osteopathic, degrees, and may do theoretical research, industrial and educational testing and assessment, or psychotherapy. In Michigan, psychologists are licensed under the Public Health Code, and may hold full (Ph.D.) or limited (M.A.) licenses. Fully licensed psychologists must have a doctoral degree in psychology ("or in a closely related field") and at least two years postdoctoral experience in practicing psychology in an organized health care setting (or other board-approved arrangement). Limited license psychologists must have a master's degree in psychology and one year of supervised (by a fully licensed psychologist) postgraduate clinical experience in an organized health care setting. Limited license psychologists cannot advertise that

they practice psychology and they must be supervised (even after their supervised postgraduate year) by a fully licensed psychologist.

Professional counselors are licensed in Michigan under the Public Health Code (as of 1988) separately from psychologists. Licensure requires a doctoral or master's degree in counseling or student personnel work and at least two years of supervised counseling experience. Through individual and group counseling, educational procedures, and other therapeutic techniques, counselors describe themselves as educators who help people learn new life skills to lead happier and more productive lives and who, by helping people to cope with normal life crises, can render unnecessary more prolonged psychological treatment. Another profession that is extensively involved in providing mental health care services is social work, which, in Michigan, is regulated under the Occupational Code. The code recognizes three levels of social worker -- social work technician, social workers, and certified social workers -- as well as a special category of social worker known as a psychiatric social worker, who has successfully completed a psychiatric social work practicum in addition to meeting the requirements for being a social work technician, social worker, or certified social worker.

Finally, Michigan also regulates a type of mental health care provider known as a marriage counselor or marriage and family therapist. This profession evolved from the fact that these kinds of counselors take as their basic assumption that psychological symptoms and difficulties of all sorts stem from faulty relationships within the family rather than from psychological conflicts within the individual. Although this kind of counseling originally focused on relationship problems of married couples, in many areas (though not in Michigan, where this title is statutorily disallowed) this type of counseling now has expanded to what is called "couples counseling" because it is offered not only to married couples but also to premarital, extramarital, and homosexual couples, all of whom have somewhat similar relationship problems. "Family therapy" originally was considered to be different from marriage counseling insofar as it dealt not just with the relationship problems of married couples but with faulty relationships within families that included members other than just the married couple. The section of the Occupational Code which regulates marriage and family therapists was revised in 1992 (Public Act 173, enrolled House Bill 4534) to

require licensure (instead of registration), to set the educational and experiential requirements for licensure, to impose certain confidentiality requirements, and to both allow and proscribe the use of certain titles (the code allows qualified people to call themselves either "licensed marriage and family therapists" or "licensed marriage counselors" and specifically prohibited the use of 16 related titles that could be used to refer to this type of counselor or therapist).

THE CONTENT OF THE BILL:

The bill would move statutory regulation of marriage and family therapists from the Occupational Code to the Public Health Code. More specifically, the bill would amend the Public Health Code to add a new part (Part 169, "Marriage and Family Therapy") to the occupations article of the health code.

Under the bill, current provisions regulating marriage and family therapists would remain virtually the same, although the Board of Marriage and Family Therapy would add three public members to the existing six licensed marriage and family therapists.

More specifically, the bill would keep the following provisions:

Definition of scope of practice. As currently is the case, "practice of marriage and family therapy" would mean "the providing of guidance, testing, discussions, therapy, instruction, or advice that is intended to avoid, eliminate, relieve, manage, or resolve marital or family conflict or discord, to create, improve, or restore marital or family harmony, or to prepare couples for marriage." It would not include administering and interpreting psychological tests beyond those consistent with the marriage and family therapist's education and training and code of ethics.

Titles and services. Only people licensed under the bill could call themselves either "licensed marriage and family therapists" or licensed marriage counselors" and use the abbreviation "L.M.F.T." . (The bill would restrict 22 titles, of which it would allow only two to actually be used.) Only people licensed under the bill, with the exception of other statutorily regulated professions and the clergy, could advertise that they offered the following

services (or similar services included in the practice of marriage and family therapy):

- * Marriage and family therapy;
- * Marriage or family counseling service or advice;
- * Marriage or family guidance service or advice;
- * Marriage or family relations service or advice;
- * Marriage or family problems service or advice;
- * Marriage or family relations advice or assistance;
- * Service in the alleviation of a marital or family problem.

Exemptions. As is now the case, the bill would exempt from its provisions all of the following people, providing that they didn't hold themselves out to the public as licensed marriage and family therapists:

- * Ordained clerics or other religious practitioners who worked for nonprofit organizations, provided that (1) they didn't charge for their services, and (2) the services were part of their duties;
- * Psychiatrists practicing in accordance with their education and training and code of ethics (though psychiatrists could advertise in telephone and other business directory listings using these titles if the psychiatrist disclosed in the listing, "in an unabbreviated fashion," the profession in which he or she was licensed);
- * People in a statutorily regulated profession or occupation who were practicing within the scope of practice of that profession, even if this practice included services to families, couples, or "subsystems of families." This would include (but not be restricted to) all of the following: physicians, attorneys, social workers (including certified social workers and social work technicians), licensed psychologists (whether they held a full, limited, or temporary limited license), licensed professional counselors (including limited license counselors), and school counselors.

Licensure. The Board of Marriage and Family Therapy (rather than, as now is the case, the department) would grant a license to anyone meeting certain qualifications. As is now the case,

to be licensed as a marriage and family therapist a person would have to have either (1) a master's or higher graduate degree from an accredited training program in marriage and family therapy, or (2) a master's or higher graduate degree from an accredited college or university with certain coursework (in family studies; family therapy methodology; human development, personality theory, or psychopathology; ethics, law, and standards of professional practice; and research). In addition, licensed marriage and family therapists must have a certain number of hours of direct client contact under specified conditions (including at least 2,000 hours of direct client contact over a period of not more than five years in supervised marriage and family therapy experience).

"Grandfather" clause. Anyone licensed under the current provisions in the Occupational Code on the date the bill took effect (January 1, 1996), would be licensed under the bill until that license expired.

Board of Marriage and Family Therapists. The current members of the Board of Marriage and Family Therapists, created under the Occupational Code, would serve as the initial members of the board under the Public Health Code until their successors were appointed or until their term expired, whichever came first (though if a current board member's term hadn't expired when the bill took effect on January 1, 1996, it would expire on June 30 of the year it was scheduled to expire). The bill would add, to the existing six-member board, three public members. Rules promulgated by the current board that were in effect when the bill took effect would continue in effect to the extent that they didn't conflict with the "Occupations" article of the Public Health Code. The rules would be enforced, and could be amended or rescinded, by the board created under the health code. The bill would not include an existing provision in the Occupational Code which grants the board the authority to promulgate rules requiring an examination as a qualification for licensure or requiring a program of continuing education as a condition of license renewal.

Privileged information and waiver. The bill would retain the current confidentiality requirements for information communicated between clients and their marriage and family therapists. All such information, as well as referrals made by a circuit court or its counseling service, would be privileged information except in the following three cases:

(1) If disclosure were legally required or was required to protect someone's health or safety;

(2) If the therapist were a defendant in a civil, criminal, or administrative action (in which case disclosure would be limited only to that particular case); and

(3) By written permission of all the people involved in the therapy who were 18 years old or older.

Fees. Fees would remain the same as they were under the Occupational Code, namely, a \$25 application fee and a \$50 annual license fee.

Repealer. The bill would repeal Article 15 of the Occupational Code (MCL 339.1501 to 339.1511), which regulates marriage and family therapists and the section of the State License Fee Act (MCL 338.2219), which sets fees for "marriage counselors."

Effective date. The bill would take effect on January 1, 1996.

MCL 333.16131 et al.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill has no fiscal implications for the state. (2-23-95)

ARGUMENTS:

For:

Marriage and family therapists provide mental health care services, and should, therefore, be regulated under the Public Health Code like other mental health care providers such as psychiatrists, psychologists, and professional counselors. When the Public Health Code was recodified in 1978, for example, psychologists -- who had been regulated under a separate statute (Public Act 257 of 1959) -- were included under the health code. Psychiatrists, who are physicians and who often treat people with mental illnesses, also were included under the health code in 1978 (when the Medical Practice Act, Public Act 185 of 1973, was incorporated into the code), while professional counselors, who also offer mental health care services, were added to the health code in 1988 by Public Act 421. It only makes sense to regulate health care professionals, whether offering physiological or psychological services, under the Public Health Code. Currently, marriage and family therapists are regulated under

the Occupational Code, which regulates commercial and, with a few exceptions, generally non-health care services such as accountants, real estate appraisers, foresters, and so forth. It just make more sense to have all mental health care providers (psychiatrists, psychologists, counselors, marriage and family therapists) regulated under the health code rather than split between the health code and a code governing commercial services.

Against:

The bill would not, in fact, move all mental health care providers under the Public Health Code because social workers -- who are major providers of mental health care -- would still be under the Occupational Code. In fact, it could be argued that if marriage and family therapists are to be added to the Public Health Code, then a number of other health care providers and health-related professions and occupations ought to be added to the health code also.

There are a number of other professions or occupations that either offer health care services or health-related services that currently are either regulated under the Occupational Code or else aren't regulated by statute at all. For example, social workers, who also are regulated under the Occupational Code, have been unsuccessful in longstanding attempts to be moved under the Public Health Code, despite the fact that clinical social workers -- typically, advanced degree social workers who practice psychotherapy, engage in counseling, and diagnose "emotional and behavioral dysfunctions" -- clearly provide direct mental health care services rather than commercial, non-health-related services. Also regulated under the Occupational Code are morticians, myomassologists (people who offer body massages), hearing aid dealers, and nursing home administrators, all of whom, it could be argued, also should be moved to the health code. In addition, there are other health care -- or health-related -- professions (such as audiologists and speech pathologists, medical technicians, acupuncturists, tattoo parlors, and health care insurance reviewers) who also ought to be considered for regulation under the health code. Rather than making piecemeal additions of these health care, and health-related, professions and occupations to the Public Health Code, for the sake of consistency and completeness either all -- or none -- of the health care (and health care-related) professions and occupations currently not regulated

by the health code should be included under the code.

Response:

There is no reason to add other health care (or health-related) professions and occupations to the health code just because marriage and family therapists, who clearly belong under the Public Health Code, are proposing that their regulation be moved from the Occupational Code to the health code. In the first place, there are too many questions regarding other potential candidates for regulation under the health code to be dealt with in a single bill. For example, last session Senate Bill 617 (which was passed by the Senate but died in the House Committee on Public Health) would have moved both social workers and marriage and family therapists from the Occupational Code to regulation under the Public Health Code. The bill failed, in part because of concerns raised over a proposed change in requirements for social workers and the fear by some medical insurers (or purchasers of such insurance) that social workers really were moving toward licensure (rather than, as currently is the case, registration) and, ultimately, mandatory third-party reimbursement. While it might be desirable to have a rational mechanism for deciding which professions and occupations should be included under the Public Health Code, the track record and fate of the now-defunct Health Occupations Council (which the health code revision of 1978 intended to serve as just such a mechanism) suggests that this may be difficult if not impossible to implement. In the absence of such a mechanism, it seems more sensible to take professions and occupations on a case-by-case basis rather than try to move groups of professions or occupations under the health code.

POSITIONS:

The Michigan Association for Marriage and Family Therapy supports the bill. (2-24-95)

The Bureau of Occupational and Professional Regulation in the Department of Commerce does not yet have a position on the bill. (2-24-95)