



**House
Legislative
Analysis
Section**

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**MOVE MARRIAGE & FAMILY
THERAPISTS TO HEALTH CODE**

**House Bill 4317 as enrolled
Public Act 126 of 1995
Second Analysis (7-18-95)**

**Sponsor: Rep. Dan Gustafson
House Committee: Regulatory Affairs
Senate Committee: Economic
Development, International Trade, and
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 extensively during the five years of work leading up to the 1978 statute. 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 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:

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- * Chiropractic
- * Counseling
- * Dentistry
- * Medicine
- * Nursing
- * Occupational therapy
- * Optometry
- * Osteopathic medicine and surgery
- * Pharmacy
- * Physical therapy
- * Podiatric medicine and surgery
- * Psychology
- * Sanitarians
- * Veterinary medicine

The 1980 Occupational Code has 23 regulatory boards governing the following 23 professions or occupations (Public Act 104 of 1995, enrolled Senate Bill 164, repealed the regulation of massage or myomassology):

- * 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. According to one estimate, about one out of every three people -- some 80 million Americans -- have had some experience with psychotherapy, that is, treatment of mental or emotional disorders by psychological (rather than traditional medical) means. As the provision of mental health services has proliferated over the past decades, so, too, has the number and kinds of mental health care providers -- sometimes to the confusion of the ordinary person. Psychotherapists or mental health care providers can come from a variety of backgrounds and may hold medical, academic, or religious degrees or certification. They may be medically trained physicians, religiously ordained clergy people, or academically trained psychologists, social workers, or various other kinds of therapists or counselors. Michigan law currently recognizes and regulates the provision of mental health services by the following providers: psychiatrists, psychologists, "professional counselors," marriage and family therapists, and social workers. (Pastoral counselors were explicitly exempted from statutory regulation when professional counselors were added to the Public Health Code in 1988.) Although the theoretical background of each of these kinds of psychotherapists has differed historically, over time many of the services they have come to offer have

tended to overlap as has the nature of their education and training. Also, the nature of the theoretical models underlying different approaches to treating mental health problems has expanded over time, for example, moving from the Freudian psychoanalytic model of "intrapsychic conflict" (seeing mental health problems as originating from conflicts that arise within the psychological framework of the individual person) to "interpersonal conflict" models that locate the origin of psychological problems in troubled relationships between or among pairs or groups of individuals.

Psychiatrists are physicians (whether MDs or DOs), and therefore may (and often do) prescribe medications for their patients in addition to, or instead of, treating patients by psychological means. In Michigan, psychiatrists, as physicians, are licensed and regulated under the Public Health Code; the state leaves the certification and regulation of the specific medical specialty of psychiatry up to the medical profession. Because professional psychoanalytic organizations originally limited their membership to licensed physicians, even today classical Freudian psychoanalysis is practiced primarily by physicians, even though many psychiatrists do not limit themselves to psychoanalysis as the sole form of psychotherapy.

Psychologists hold academic rather than medical degrees and may do theoretical research or industrial and educational testing and assessment, in addition to (or instead of) psychotherapy. In fact, psychologists originally were primarily researchers rather than direct providers of mental health services. 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. Counselors describe themselves as educators who -- through individual and group counseling, educational procedures, and other therapeutic techniques -- help people learn new life skills in order to lead happier and more productive lives. Counselors also see themselves as being able to reduce the need for more prolonged psychological treatment by helping people to cope with normal life crises. Certain kinds of social workers also have become involved in providing mental health care services, but are regulated under the Occupational Code rather than under the Public Health Code. The Occupational Code recognizes three levels of social worker (social work technician, social worker, and certified social worker), as well as recognizing a special category of social worker known as a "psychiatric social worker." Psychiatric social workers are required to successfully complete a psychiatric social work practicum in addition to meeting the requirements for being a social work technician, social worker, or certified social worker. Although social workers originally functioned as facilitators for people negotiating an increasingly complex system of health and human services, over the years some social workers also have become direct providers of mental health services, whether in private practices or in health care facilities or agencies.

Finally, Michigan also regulates marriage counselors or marriage and family therapists under the Occupational Code. According to one account, marriage and family therapy originally evolved from the assumption that psychological symptoms and difficulties of all sorts stem from faulty relationships within the family rather than from psychological conflicts within the individual (which is a basic Freudian assumption). Although this approach to counseling apparently originally focused on relationship problems of married couples, in many areas this type of counseling now has expanded to what is called "couples counseling" (though not in Michigan, where this title is statutorily disallowed) 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" apparently originally differed 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 clarify that marriage and family therapists/marriage counselors be licensed (instead of registered), to update the educational and experiential requirements for licensure, to continue 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 prohibits the use of 16 related titles that could be used to refer to this type of counselor or therapist). The 1992 amendment basically codified and clarified existing regulation of marriage and family therapists, who, prior to the revision, had been treated by the state as licensed rather than registered professionals despite the confusing language in the Occupational Code that mentioned both licensing and registration of this profession.

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 (MCL 333.16131 et al.). 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, while repealing the article in the Occupational Code that currently regulates marriage and family therapy.

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.

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.

No additional mandatory insurance coverage. The bill would explicitly say that the addition of marriage and family therapy to the Public Health Code would not mandate additional coverage, payments, or benefits by a health care payment or benefits provider ("including, but not limited to, a health insurer, nonprofit health care corporation, or health maintenance organization").

Fees. Fees would remain the same as they are 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.

FISCAL IMPLICATIONS:

As an analysis by the Department of Commerce points out, since both the Public Health Code and the Occupational Code are administered by the Bureau of Occupational and Professional Regulation in the department, there would be no change in workload or fees charged to applicants and licensees (though there would be an internal change of assigned staff). (3-9-95)

According to the Senate Fiscal Agency, there were 1,137 licensed therapists in Michigan as of the end of March 1994. A total of 22 applications were received during fiscal year 1992-93. Total revenue to the Department of Commerce could be as much as \$60,000 during fiscal year 1995-96. (6-21-95)

ARGUMENTS:

For:

The bill wouldn't change the regulation of marriage and family therapists. It simply would transfer the current regulation of this profession, which now is under the Occupational Code, to the Public Health Code.

For:

Marriage and family therapists currently are regulated under the Occupational Code, which generally regulates commercial non-health care services such as accounting and real estate appraisal. Marriage and family therapists, however, 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. As an analysis by the Department of Commerce points out, psychology and counseling currently are regulated under the Public Health Code, and marriage and family therapy has parallel requirements for educational preparation, clinical experience, client protection, and confidentiality of client disclosures during treatment. The analysis also points out that while there are distinct difference in theoretical approach, educational preparation, and clinical modalities among these various mental health professions (with the exception, it should be noted, of psychiatry, which is a medical specialty), there also are a number of similarities in training and overlap in the delivery of services that would make it advantageous (to the department, to health care facilities and agencies, and to consumers) to coordinate regulation of these

related professions under one code. The department argues that coordination of licensing of mental health care providers would: (a) enable it to better advise applicants with unusual qualifications of their qualifications for related mental health licenses, thereby helping them to find the field that was the best match for their talents and thus to enter the workforce with appropriate credentials; (b) enhance the department's coordination of the regulatory process by placing all of the mental health professions under uniform disciplinary standards and procedures; and (c) enable the department to better identify individuals with multiple licenses and take action against those licensees with major offenses. In addition, facilities and agencies who use several types of mental health care practitioners would have the same standards and procedures to follow when reporting ethical violations or handling impaired practitioners. Finally, consumers wouldn't have to file complaints and attend hearings under two codes when they filed complaints against practitioners with multiple licenses.

Against:

All mental health care providers should be regulated under the Public Health Code, so if regulations of marriage and family therapists is moved to the health code, then the regulation of social workers also should be moved to the health code. While the bill would place marriage and family therapists under the health code, social workers -- who also are major providers of mental health services -- would remain regulated under the Occupational Code. According to an analysis by the Department of Commerce, a number of studies that have examined the regulation of mental health care professions -- including psychology, social work, counseling, and marriage and family therapy -- have consistently held that regulation of all four occupations should be coordinated as far as possible so that consistent standards for public protection could be established. The analysis says that "due to similarities in education, clinical experience, and professional practice, there are compelling arguments to include all these related professions under the Public Health Code for more consistent regulation and better public protection." In fact, Senate Bill 617 of 1993, which would have moved both social workers and marriage and family therapists from the Occupational Code to regulation under the Public Health Code, passed the Senate

but died in the House committee last session. If marriage and family therapists are to be moved to the health code, then so, too, should social workers.

Response:

There is no reason to hold up the transfer of marriage and family therapy to the Public Health Code until social work, too, could be moved. There have been problems with past attempts to transfer the regulation of social work that just haven't surfaced with respect to marriage and family therapy. Past attempts to move the regulation of social work from the Occupational Code to the health code have failed, at least in part, because of concerns that the legislation also contained other substantive -- and controversial -- changes. For example, critics of Senate Bill 617 charged that the bill also would have substantively revised social workers' scope of practice and that it could have resulted in the possibly costly exclusion from social work of an existing pool of practitioners. In addition, some medical insurers (or purchasers of such insurance) charged that social workers really were moving toward licensure (rather than, as currently is the case, registration) and, ultimately, mandatory third-party reimbursement. The transfer of social work from the Occupational Code to the health code should be done in separate legislation, and the transfer of marriage and family therapy should not be tied to that of social work.

Against:

Although it may be logical and desirable to regulate marriage and family therapists under the Public Health Code, there are a number of other health care or health-related professions or occupations that people have proposed be regulated under the Public Health Code. Why not establish a standard procedure to evaluate whether or not a profession or occupation seeking regulation under the health code be granted such status instead of adding professions and occupations piecemeal, as the bill would do?

A number of other professions or occupations that would seem to be candidates for regulation under the health code currently are either regulated under the Occupational Code or else aren't regulated by statute at all. For example, even if the bill were enacted, a number of health care or health-related professions or occupations would remain under the Occupational Code, including social work, undertaking (mortuary science), the sale of hearing aids, and nursing home administration. In addition, there are other health care or health-related

professionals -- such as audiologists and speech pathologists, medical technicians, acupuncturists, tattoo parlors, and health care insurance reviewers - - that currently aren't regulated but for whom regulation under the health code has been proposed in the past.

Rather than continuing to make piecemeal additions to professional and occupational regulation under the Public Health Code, there should be some kind of rational mechanism for evaluating whether or not a profession or occupation should be added to the code.

Response:

In the first place, as the case of social work illustrates, there are too many questions regarding other potential candidates for regulation under the health code to be dealt with in the present bill. And although a separate, rational mechanism for deciding which professions and occupations should be included under the Public Health Code might ideally be desirable, this approach has already been tried unsuccessfully in the form of the now-defunct Health Occupations Council (HOC). The 1978 revision of the Public Health Code created the council to, among other things, evaluate proposals for licensure or registration of existing and emerging health occupations in accordance with statutory criteria (which emphasize the need for public protection and stress that only licensure will achieve that objective). However, for some reason, the council never did effectively carry out this part of its function, and it finally was dissolved (without replacement) by legislation implementing changes in disciplinary procedures for health care professionals regulated under the health code. 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. In any case, certainly the transfer of already existing regulation of marriage and family therapists to the health code shouldn't be jeopardized by the absence of a decision-making mechanism other than the legislative process itself.