Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 227 (as enacted) **PUBLIC ACT 50 of 2024**
Sponsor: Senator Dan Lauwers
Senate Committee: Health Policy
House Committee: Health Policy

Date Completed: 8-14-24

RATIONALE

Children's therapeutic group homes are a type of child caring institution designated as a psychiatric residential treatment facility (PRTF) by the Center for Medicaid Services based on a policy submission from the State. A PRTF is a facility for individuals aged 21 or younger who require mental health care in a residential-type facility up to, and including, inpatient level of care. Some people believe that Michigan is currently experiencing a children's mental health crisis because of a lack of children's psychiatric inpatient beds. According to testimony before the Senate Committee on Health Policy, frequent difficulties with behavior management at children's therapeutic group homes require emergency restraint and seclusion to resolve.

Reportedly, many entities interested in opening or operating a PRTF felt the law's previous regulations regarding restraint and seclusion made operating such a facility impractical and so did not wish to establish PRTFs safely within local communities in Michigan. In an effort to enable the success of PRTFs and provide children with behavioral management issues options for care closer to their own communities, it was suggested that these child caring institutions abide by standards already in place in the Mental Health Code and associated rules.

CONTENT

The bill amended the child care licensing Act to require emergency safety intervention in the form of physical management in child caring institutions to comply with standards prescribed by the Mental Health Code and associated administrative rules.

The bill took effect on June 6, 2024.

Emergency Restraint and Seclusion

"Child caring institution" means a child care facility that is organized for the purpose of receiving minor children for care, maintenance, and supervision, usually on a 24-hour basis, in buildings maintained by the child caring institution for that purpose, and operates throughout the year.

Before the bill's passage, if a child caring institution contracted with and received payment from a community mental health services program or prepaid inpatient health plan, the child caring institution could place a minor child in personal restraint or seclusion as provided below but could not use mechanical restraint or chemical restraint.

("Seclusion" meant the involuntary placement of a minor child in a room alone, where the minor child is prevented from exiting by any means, including the physical presence of a staff person if the sole purpose of that staff person's presence is to prevent the minor child from

exiting the room. The bill modified the definition of "seclusion" to specify that it does not include techniques for therapeutic de-escalation.)

Firstly, a child caring institution had to require its staff to have ongoing education, training, and demonstrated knowledge of all the following:

-- Techniques to identify minor children's behaviors, events, and environmental factors that could trigger emergency safety situations.
-- The use of nonphysical intervention skills, such as de-escalation, mediation conflict resolution, active listening, and verbal and observational methods to prevent emergency safety situations.
-- The safe use of personal restraint or seclusion, including the ability to recognize and respond to signs of physical distress in minor children who were in personal restraint or seclusion or who were being placed in personal restraint or seclusion.

Additionally, a child caring institution's staff had to be trained in the use of personal restraint and seclusion, be knowledgeable of the risks inherent in the implementation of personal restraint and seclusion, and demonstrate competency regarding personal restraint or seclusion before participating in the implementation of personal restraint or seclusion. A child caring institution's staff had to demonstrate their competencies in these areas on a semiannual basis. The Department of Health and Human Services (DHHS) had to review and determine the acceptability of the child caring institutions' staff education, training, knowledge, and competency requirements required by these provisions and the training and knowledge required of a licensed practitioner in the use of personal restraint and seclusion.

The bill deleted the provision allowing a child caring institution to place a minor in personal restraint or seclusion and the associated training requirements.

Instead, under the bill, if a child caring institution contracts with and receives payment from a community mental health services program or prepaid inpatient health plan, the child caring institution must comply with the rules for child caring institutions. The bill allows emergency safety intervention in the form of physical management but requires the intervention to comply with the Mental Health Code and associated administrative rules.

("Emergency safety intervention" meant the use of personal restraint or seclusion as an immediate response to an emergency safety situation. The bill modified this definition to specify that the use of personal restraint as an emergency safety intervention is not child abuse or neglect.)

(Under the Code, physical restraint and seclusion may be used only after less restrictive interventions are considered and to prevent harm to people or substantial damage to property. Physical restraint and seclusion may be temporarily employed for up to 30 minutes in an emergency without an authorization or an order. Immediately after the imposition of the temporary physical restraint or seclusion, a physician must be contacted to order or authorize the physical restraint or seclusion. If the physician does not authorize restraint or seclusion, it must cease. A secluded or restrained resident must continue to receive food, water, and sanitation services.)

Finally, the bill modified and added the following definitions. "Children's therapeutic group home" meant a child caring institution receiving six minor children or less who were diagnosed with a developmental disability or a serious emotional disturbance as defined in the Code. The bill modified this definition to delete the requirement that behavior management rooms, personal restraint, mechanical restraint, or seclusion be prohibited in a children's therapeutic

group home; instead, emergency safety intervention in the form of physical management is allowed but must comply with the Code and associated administrative rules.[1]

"Psychiatric residential treatment facility" means a facility other than a hospital that provides psychiatric services in an inpatient setting to individuals under the age of 21. Emergency safety intervention in the form of physical management is allowed but must comply with the Code and associated administrative rules.

MCL 722.111 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Allowing PRTFs to use physical restraint and seclusion in emergencies and with appropriate supports and education helps make these mental health facilities safer. According to testimony before the Senate Committee on Health Policy, the DHHS can provide trainings on proper interventions at the clinical level and also can include supports for child caring institutions, such as education on proper use of seclusion and restraints. The bill recognizes that personal restraint and seclusion are necessary tools for crisis situations while also recognizing the limits of these methods. This balance is necessary for the continuation of children's therapeutic group homes and for the safety of children and staff within them.

Legislative Analyst: Alex Krabill

FISCAL IMPACT

The bill will have no fiscal impact on the DHHS or local units of government.

Fiscal Analyst: Humphrey Akujobi

[1] The Code specifies under MCL 330.1740 & 330.1742 the requirements for personal restraint and seclusion, respectively. Generally, the tactics may only be used if essential and for a maximum of 30 minutes without an authorization or order from a physician (referred to as "temporary restraint" or "temporary seclusion"). After being placed in temporary restraint or temporary seclusion, a physician must be contacted for an examination to determine if the physical restraint or seclusion should last for more than 30 minutes. If an authorization or order is not given from the physician, the patient must be removed from physical restraint or seclusion.

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