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Senate Bill 348 and 349 (as introduced 5-23-23)

Sponsor: Senator Mallory McMorrow

Committee: Housing and Human Services

Date Completed: 6-5-23

INTRODUCTION

Taken together, the bills would prohibit a mental health professional from engaging in conversion therapy with a minor and would specify the disciplinary action that the Department of Licensing and Regulatory Affairs (LARA) could take if a mental health professional did engage in such activity.

The bills are tie-barred, and each bill would take effect 90 days after its enactment.

PREVIOUS LEGISLATION

(Please note: This section does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)

Together, Senate Bills 348 and 349 are a reintroduction of Senate Bill 367 of the 2021-2022 Legislative Session, Senate Bill 284 and House Bill 4515 of the 2019-2020 Legislative Session, Senate Bill 1131 and House Bill 5550 of the 2017-2018 Legislative Session, and House Bill 5669 of the 2015-2016 Legislative Session.

FISCAL IMPACT

Senate Bill 348 would have an indeterminate fiscal impact on LARA and no significant impact on local units of government. If a licensed professional were reported for an alleged violation under the bill, LARA could incur investigatory costs if the violation met the standards for gross negligence or willful misconduct. However, these costs likely would be covered by existing appropriations. These costs could be partially offset by any fines imposed by LARA.

Additionally, the bill would have no fiscal impact on the Department of Health and Human Services (DHHS). Since June 2021, the DHHS has been prohibited from using State or Federal funds for the practice of conversion therapy on minors by Executive Directive 2021-3 (see **BACKGROUND**). This includes funds related to Medicaid, the Children's Health Insurance Program, child welfare services, and juvenile justice programs. As this bill would codify the requirements in the Executive Directive, there would be no change to current departmental policy.

Senate Bill 349 would have no fiscal impact on the DHHS or local units of government.

Proposed MCL 330.1901a (S.B. 348)
MCL 330.1100a (S.B. 349)

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CONTENT

Senate Bill 348 would amend the Mental Health Code to prohibit a mental health professional from engaging in conversion therapy with a minor. A mental health professional that engaged in conversion therapy with a minor would be subject to disciplinary action and licensing sanctions under Sections 16221(a) and 16226 of the Public Health Code.

(Generally, Sections 16221(a) and 16226 require LARA to investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. If there is a violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, or any conduct, practice, or condition that impairs, or may impair, the ability to safely and skillfully engage in the practice of the health profession, the disciplinary subcommittee must impose sanctions such as probation, limitation, denial, suspension, revocation, permanent revocation, or a fine.)

Senate Bill 349 would amend the Mental Health Code to define "conversion therapy" as any practice or treatment by a mental health professional that seeks to change an individual's sexual orientation or gender identity, including efforts to change behavior or gender expression or to reduce or eliminate sexual or romantic attractions or feelings toward an individual of the same gender. The term would not include counseling that provided assistance to an individual undergoing a gender transition, counseling that provided acceptance, support, or understanding of an individual or facilitates an individual's coping, social support, or identity exploration and development, including sexual orientation-neutral intervention to prevent or address unlawful conduct or unsafe sexual practices, as long as the counseling did not seek to change an individual's sexual orientation or gender identity.

BACKGROUND

On June 14, 2021, Governor Gretchen Whitmer signed Executive Directive 2021-3 prohibiting the practice of conversion therapy for minors. The Directive specifically stated that Lesbian, Gay, Bisexual, Transgender, Queer/Questioning (LGBTQ+) youth face significant health disparities compared to their peers and that the practice of conversion therapy is not supported by medicine or science. The Directive required the DHHS to take necessary actions to prohibit State and Federal funding for conversion therapy on minors. Additionally, the Directive ordered all departments and autonomous agencies subject to supervision by the Governor that regulate, provide, procure, or pay for medical or mental health services on behalf of Michigan to explore what further actions they could take to protect minors from the practice of conversion therapy, as permitted by law.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.