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BILL ANALYSIS

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Senate Bill 206 (Substitute S-2 as reported)
Sponsor: Senator Shirley Johnson
Committee: Health Policy

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RATIONALE

Some people believe that the State of Michigan should license audiologists. These individuals' areas of practice include the assessment and rehabilitation of people with auditory disorders and vestibular impairments (which pertain to equilibrium), prevention of hearing loss, and research into normal and disordered auditory and vestibular functions. In this country, audiologists are certified by the American Speech-Language-Hearing Association (ASHA), which requires them to have a graduate degree, complete a residency, and pass a national exam. Audiologists also may be certified by the American Academy of Audiology. Licensure is governed by individual state laws. According to the Michigan Academy of Audiology, only Michigan and Idaho neither license nor register audiologists.

It is estimated that 400 to 500 audiologists currently practice in Michigan. While many of them evidently hold a license as a hearing aid dealer, audiologists are not otherwise subject to State regulation. It has been suggested that licensure would protect both the profession and the public from untrained or incompetent practitioners, as well as bring Michigan law into line with that of most other states.

CONTENT

The bill would amend the Public Health Code, and create Part 168 (Audiology) within the Code, to provide for the licensure of audiologists. The bill would do the following:

- Establish application and license fees.
- Specify educational, practical, and examination requirements for

licensure.

- Create the Michigan Board of Audiology.
- Regulate certain activities of audiologists, including testing vestibular function, administering audiometric tests, and selling a hearing instrument to a minor.
- Indicate that Part 168 would not limit certain individuals from performing their jobs, such as teaching communication disorders and screening hearing.

Part 168 would be created within Article 15 of the Code, which contains general and specific regulations for health occupations.

Licensure

The bill would prohibit a person from engaging in the practice of audiology without being licensed or otherwise authorized by Article 15, except as described below. The bill would establish an application processing fee of \$120 and an annual license fee of \$150 for a person licensed or seeking licensure as an audiologist.

The proposed Board of Audiology would have to require, by rule, that an individual granted a license as an audiologist possess a master's or doctoral degree in audiology from a regionally accredited college or university approved by the Board; and have successfully completed, as determined by the Board, a national examination in audiology or an examination determined by the Board to be equivalent to the national exam. If the person had a master's degree, he or she also would have to have completed at least nine months of supervised clinical experience in audiology.

Practice of Audiology

"Practice of audiology" would mean the nonmedical and nonsurgical application of principles, methods, and procedures related to disorders of hearing, including all of the following:

- Facilitating the conservation of auditory system function.
- Developing and implementing hearing conservation programs.
- Preventing, identifying, and assessing hearing disorders of the peripheral and central auditory system.
- Selecting, fitting, and dispensing amplification systems, including hearing aids and related devices, and providing training for their use.
- Providing auditory training, speech reading, consulting, and education to individuals with hearing disorders.
- Administering and interpreting tests of vestibular function and tinnitus in compliance with the bill.

(Tinnitus refers to ringing or other noise in the ear.)

Practice of audiology also would include routine cerumen (earwax) removal from the cartilaginous portion of the external ear in otherwise healthy ears. If an audiologist discovered any trauma, including continuous uncontrolled bleeding, lacerations, or other traumatic injuries while engaged in routine cerumen removal, he or she would have to refer the patient as soon as practically possible to a person licensed in the practice of medicine or osteopathic medicine and surgery.

In addition, practice of audiology would include speech and language screening limited to a pass-fail determination for the purpose of identifying individuals with disorders of communication.

Practice of audiology would not include the practice of medicine or osteopathic medicine and surgery, or medical diagnosis or treatment.

Under the bill, use of the following words or titles would be restricted to those people authorized by Article 15 to use them: "audiometrist", "audiologist", "hearing therapist", "hearing aid audiologist",

"educational audiologist", "industrial audiologist", "clinical audiologist", or any other similar title conveying the practice of audiology.

Board of Audiology

The Michigan Board of Audiology would be created in the Department of Consumer and Industry Services. It would have to consist of the following nine voting members:

- Five audiologists.
- Two individuals licensed to practice medicine or osteopathic medicine and surgery who held a certificate of qualification from the American Board of Otolaryngology.
- Two members of the public, who could not be audiologists or physicians or have family or financial ties to an audiologist or physician.

The audiologist members would have to be appointed from a list of at least three times the number of vacancies, submitted jointly to the Governor by the Michigan Speech-Language and Hearing Association and the Michigan Academy of Audiology. The physician members would have to be appointed from a list of at least two individuals submitted to the Governor by the Michigan Otolaryngological Society.

The five audiologists initially appointed to the Board would have to meet the requirements of Section 16135 of the Code. (That section requires members of health profession boards, committees, and task forces to be all of the following: at least 18 years old; of good moral character; a resident of the State; and currently licensed or registered in this State if licensure or registration in a health profession is a requirement for membership. A member also must have actively practiced or taught that profession in any state for at least two years before appointment. If licensure or registration is required, Section 16135 allows the Governor to appoint individuals who are certified or otherwise approved by a national organization, and/or who have actively practiced or taught in the profession for at least two years.)

Regulated Activities

An audiologist could administer tests of

vestibular function only to patients who had been referred to him or her by a person licensed to practice medicine or osteopathic medicine and surgery.

If an audiologist administered an audiometric test for tinnitus and his or her examination of the patient reflected the presence of otologic or systemic diseases, the audiologist would have to refer the patient promptly to a person licensed to practice medicine or osteopathic medicine and surgery.

An audiologist would be required to comply with Federal Food and Drug Administration medical referral guidelines for fitting and dispensing hearing instruments, as incorporated by reference under rules adopted by the Board.

A licensed audiologist could not sell a hearing instrument to a person under 18 years old unless the person or his or her parent or guardian gave the audiologist a written statement signed by a licensed physician who specialized in diseases of the ear, stating both of the following:

- The person's hearing loss had been medically evaluated within six months before the statement was presented.
- The person could be considered a candidate for a hearing instrument.

Individuals not Limited by Part 168

The bill specifies that Part 168 would not limit an individual employed by a regionally accredited college or university and involved with research or the teaching of communication disorders, from performing those duties for which he or she was employed by that institution, as long as the individual did not engage in the practice of audiology or hold himself or herself out as licensed or otherwise authorized under Article 15 as an audiologist.

Part 168 would not limit an individual who was employed by the Department of Community Health in one of its approved hearing screening training programs from conducting screening of hearing sensitivity.

In addition, Part 168 would not limit an individual certified by an agency acceptable to the Occupational Health Standards

Commission from engaging in hearing screening as part of a hearing conservation program in compliance with standards adopted under the Michigan Occupational Safety and Health Act.

Part 168 also would not limit a certified, licensed, registered, or otherwise statutorily recognized member of another profession, including a person licensed in medicine or osteopathic medicine and surgery and an unlicensed or licensed person to whom tasks had been delegated under the physician's supervision, from practicing his or her profession as authorized by law, as long as the individual did not hold himself or herself out to the public as possessing a license issued or title protected under Article 15.

MCL 333.16131 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

Audiologists are highly qualified health care professionals who should be recognized in Michigan statute. To become certified by ASHA, audiologists must earn a master's or doctoral degree, pass a national exam, and complete at least 2,000 hours of mentored professional practice in a two-year period. Nevertheless, licensure is the credential that legally defines the practice of audiology in the vast majority of states. Nothing in Michigan law, however, regulates or sets standards for audiologists. By providing for the licensure of audiologists and defining their scope of practice, the bill would give these professionals the recognition their counterparts receive in 48 other states, as well as reduce reliance on ASHA certification. Licensure also would create a framework in which meaningful sanctions could be imposed on incompetent or unethical audiologists. In other words, if a person had to be licensed in order to practice audiology, then the license could be suspended or revoked if grounds existed.

In addition, the bill would help educate and protect consumers, who do not readily distinguish between hearing aid dealers and audiologists. Although Michigan licenses

hearing aid dealers and requires them to pass a national exam, these individuals must have only a high school education and their scope of practice is relatively limited. Audiologists, on the other hand, must successfully complete a rigorous graduate degree program, which includes a practicum, an internship, or a residency in each year.

Furthermore, since audiologists are not regulated in Michigan, there is nothing to stop virtually anyone from calling himself or herself an audiologist. By providing statutory protection for the titles used in the audiology profession, the bill would protect the public from untrained, unscrupulous practitioners.

Supporting Argument

Medicare and Medicaid often call for audiological services by an audiologist legally authorized to perform under state law. If audiologists were licensed by this State, they would qualify to receive Federal insurance reimbursements.

Response: Although licensure might enable audiologists to receive *direct* Federal reimbursement, audiological services need not be performed by a licensed audiologist in order to be covered by Medicare or Medicaid. Presently, certification by ASHA is the sole criterion for provider qualification under Medicaid, and Medicare requires either state licensure or ASHA certification. Under proposed Medicaid regulations, an individual would have to have a master's or doctoral degree in audiology and either 1) be licensed by the state in which the individual performs audiological services, or 2) hold a certificate of clinical competence issued by ASHA or meet minimum requirements for supervised clinical experience.

Opposing Argument

By providing for the licensure of audiologists, the bill would exempt them from the statute that regulates hearing aid dealers. While audiologists must have an advanced degree, their national exam does not require them to demonstrate that they are qualified to fit hearing aids or perform cerumen removal. Licensed hearing aid dispensers, on the other hand, must pass a national examination that includes a hands-on component. Evidently, one part of the exam involves taking an earmold impression, and the failure rate averages 40%. Allowing someone to become a licensed audiologist without being tested in

this skill could endanger the public.

Response: Although the ASHA exam for audiologists does not include a hands-on portion, audiologists take this exam only after earning a graduate degree that includes many hours of practical experience. When a certified audiologist is hired by a school, ear-nose-and-throat specialist, or hospital, he or she is routinely required to take ear impressions, and is qualified to do so by virtue of his or her training.

Cerumen removal is a necessary part of fitting hearing devices and testing hearing. Under the bill, audiologists would be limited to removing earwax from the external portion of an otherwise healthy ear. If an audiologist discovered continuous bleeding, cuts, or other traumatic injuries, he or she would have to refer the patient to a physician as soon as practically possible.

Opposing Argument

The licensure of audiologists under the Public Health Code is unwarranted. New licensing requirements should be enacted only for the purpose of promoting safe and competent health care, and only when the public cannot be protected effectively by any other means. This does not appear to be the case in regard to audiology. If audiologists are to be regulated by statute, it should be within the Occupational Code, which covers the hearing aid industry and other nonmedical occupations.

Response: Considering the potential injury that can be inflicted by an inept practitioner, such as ear drum perforation, licensure is in fact necessary to protect the public health. According to a representative of the Michigan Academy of Audiology, a case in this State is presently before the ethics committee of the American Academy of Audiology. That entity, however, can do little more than reprimand a person. Furthermore, Article 15 of the Public Health Code, which the bill would amend, regulates a wide spectrum of health care professionals, including occupational therapists, psychologists, physical therapists, social workers, and optometrists.

Opposing Argument

According to the Bureau of Health Services, within the Department of Consumer and Industry Services, it does not have the resources to handle an additional profession.

The Bureau recently has taken on the regulation of social workers and nursing home administrators, who previously were regulated under the Occupational Code. At the same time, the Bureau has fewer employees due to hiring constraints and early retirements. Also, with only 400 to 500 practitioners in Michigan, audiology is a small profession. Despite the level of the proposed fees, the Bureau does not believe that the new licensure program would pay for itself.

Opposing Argument

The proposed title protection would be too broad. In addition to limiting the use of specific titles, such as "audiologist" and "audiometrist", the bill would restrict the use of "any other similar title conveying the practice of audiology". Some people within the hearing health profession are called "audioprosthologists". According to a representative of the Michigan Hearing Aid Society, Inc., these individuals are certified by the American Conference of Audioprosthology after taking a college-level class once a week for 13 weeks and completing 90 hours of practicum in the field of hearing instrument science approved by the American Council of Education. Reportedly, this certification is nationwide and has been in use for over five years. The bill, however, could ban the use of "audioprosthology" because it could be considered similar to the titles that would be protected.

Response: If consumers do not distinguish between hearing aid dealers and audiologists, it is highly likely that the public does not know the difference between an audiologist and an audioprosthologist. Although an audioprosthologist has training beyond that required for hearing aid dealers, it does not compare with the graduate degree and practical experience required of audiologists. It would do a disservice to the public to perpetuate confusion between these considerably different hearing health practitioners.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would create a fee structure designed to offset the costs of regulating this profession, and would create an oversight board for the profession. According to the Department of Consumer and Industry

Services, there are approximately 400 to 500 practicing audiologists in Michigan. If 400 were to become licensed, the annual licensing revenue would total \$60,000. Revenue would be greater in the first year as application fees would generate \$48,000. The bill would increase the workload in the Licensing and Complaint Allegation Division within the Bureau of Health Services, but the revenue generated should be sufficient to cover any additional staffing or information technology costs that would be incurred.

Fiscal Analyst: Maria Tyszkiewicz

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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.