

Legislative Analysis



REVISE LICENSING PROVISIONS FOR EMS PERSONNEL & HEALTH CARE PROFESSIONALS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5684 as enrolled
Public Act 304 of 2010
Sponsor: Rep. Marie Donigan
House Committee: Health Policy
Senate Committee: Health Policy (Discharged)

First Analysis (1-19-11)

BRIEF SUMMARY: The bill would amend the Public Health Code so that a hearing on imposing a license sanction on a person licensed as an EMS would be scheduled only upon the request of the affected licensee; the bill would also revise the time period during which persons practicing as massage therapists, dietitians and nutritionists, and speech-language pathologists may apply for licensure under grandfather provisions.

FISCAL IMPACT: The bill would have no fiscal impact on the Department of Community Health.

THE APPARENT PROBLEM:

Currently, the Department of Community Health (DCH) has authority to deny, revoke, or suspend an emergency medical services (EMS) personnel license for certain unlawful conduct, such as the illegal diversion of drugs. The department is required to provide notice of the intent to levy a license sanction and to notify the licensee of the opportunity for a hearing. The hearing is then scheduled whether or not the licensee responds to the notice.

According to the DCH, there is a high incidence of "no shows" at these hearings. This wastes scarce public resources and creates a time burden for other people required to be at the hearing. Apparently, one reason for the no shows is that depending on the particulars of a case, the licensee doesn't want the hearing. It has been suggested that instead of these hearings being automatically scheduled, that they only be scheduled if a licensee requests one.

In a separate matter, massage therapy, dietetics and nutrition, and speech-language pathology have all recently become licensed professions. Each new licensing act provided for "grandfathering" current practitioners if they applied for licensure within two years of the effective date of their particular licensing act. A "grandfather" clause allows a person who was practicing in a profession at the time a new licensing structure was enacted to be automatically licensed upon application without having to meet the new educational standards or examination requirements.

However, before the DCH can issue licenses for new or current practitioners, rules to implement each act must be completed. In each recent case, the rules process has not been completed and the time period in which a person who was practicing any of these three professions at the time the new licensure structure was enacted has either expired or is about to expire. If these acts are not amended, once the new licenses are ready to be issued, these

professionals will not be able to be licensed under the act unless they meet the new minimum standards and examination requirements created by their respective statutes.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code (MCL 333.17609 et al.) (1) so that a hearing would be scheduled before imposing license sanctions on a person licensed as an EMS only if requested by the licensee and (2) to revise the time period during which persons practicing as massage therapists, dietitians and nutritionists, and speech-language pathologists may apply for licensure under grandfather provisions.

Emergency Medical Services personnel

The bill would amend Section 20958 of the health code. Under the bill, the notice of intent to impose a license sanction that is required to be provided to the licensed EMS would have to be sent by certified mail or personal service.

In addition, the bill would specify that the notice of intent would have to set forth the particular reasons for the proposed action and advise the applicant or licensee that he or she is entitled to the opportunity for a hearing before the director (or designee). If the applicant or licensee does not make a written request to the DCH for a hearing within 30 days of receiving the notice, the license would be considered denied, revoked, or suspended as stated in the notice.

If a hearing is requested, it would be conducted pursuant to the Administrative Procedures Act and departmental rules. A full and complete record of the proceeding would have to be kept. An interested party could request a transcription of the record, but would be responsible for the costs of preparing it. On the basis of a hearing or if the applicant or licensee did not request a hearing, the department could issue, deny, suspend, or revoke a license.

The DCH could establish procedures, hold hearings, administer oaths, issue subpoenas, or order testimony to be taken at a hearing or by deposition in a proceeding pending at any stage of the proceeding. In addition, a person could be compelled to appear and testify and to produce books, papers, or documents.

If a person does not obey the subpoena, a party to the hearing could invoke the aid of the circuit court having jurisdiction to require the attendance and testimony of witnesses. The circuit court could issue an order requiring an individual to appear and give testimony. Failure to obey the court order could be punished as contempt.

Grandfather clauses

The bill would amend provisions pertaining to "grandfathering in" persons who were actively engaged in certain professions at the time a licensure structure for their profession was enacted. Instead of requiring these persons to apply for licensure within two years of the effective date of the licensing act, they could apply on or before the expiration of two years after the effective date of departmental rules.

The following professionals would be affected:

** Speech-language pathologists: (1) a certified teacher who was endorsed as of January 12, 2009, in the area of speech and language impairment for providing services in a school district, ISD, nonpublic school, or state department that provided educational services; and (2) an individual who had the credential conferred by the American Speech-Language-Hearing Association as a certified speech-language pathologist.

** Massage therapists meeting certain qualifications under the act.

**Dietitians or nutritionists who are registered as a dietitian by the Commission on Dietetic Registration and who fulfills the standards of the Commission.

BACKGROUND INFORMATION:

As introduced, House Bill 5684 would have created a licensure structure for persons engaging in genetic counseling. That language was stripped out and instead the contents of House Bills 6552 (revising the grandfather clauses) and 6553 (hearing for EMS personnel) were added.

ARGUMENTS:

For:

The provisions of the bill relating to the grandfather clauses of the new licensing acts are purely technical in nature. If not amended, the intent to allow individuals engaged in those professions at the time the licensure statutes were enacted to continue to engage in their chosen profession unimpeded would be nullified.

As to the provisions regarding EMS personnel, the right to a hearing would not be affected. Under the bill, a hearing would be held only if requested by the licensee facing license sanctions or licensure denial rather than being an automatic process. The bill also adds some important protections for the licensee such as requiring the notice of intent to be sent by certified mail or delivered by a process service. This should increase the likelihood that an affected licensee would receive the notice and respond. Most importantly, the bill would eliminate unnecessary hearings; for instance, when the licensee does not contest the license sanction. Thus, administrative time spent by DCH staff attending hearings for which the licensee does not show up could be spent on other duties.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Margaret Alston
Susan Frey

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