

LICENSING OF ADULT RESIDENTIAL PSYCHIATRIC PROGRAMS

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House Bill 4052 as introduced
Sponsor: Rep. Mary Whiteford
Committee: Health Policy
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Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4052 would create an act to establish the standards for the licensing of adult residential psychiatric programs.

Types of facilities

The bill would specify that a *residential treatment facility* would offer residential psychiatric care in a program designed to treat an adult with a mental illness and any associated or co-occurring medical condition.

Residential treatment facility would be defined under the bill as a facility operated for the primary purpose of providing *residential psychiatric care* to individuals. It would not include a psychiatric hospital or psychiatric unit, an adult foster care facility, a child care organization, a hospice facility, a nursing home or home for the aged, a methadone treatment facility, a veterans facility, or the residence of a relative or guardian of a person with mental illness.

Residential psychiatric care would mean active psychiatric treatment provided to an individual with a persistent pattern of emotional, psychological, or behavioral dysfunction of a severity that requires 24-hour supervised care.

A *residential psychiatric program* would have to meet one of several sets of standards within three years after initial licensure, and maintain those standards while licensed, and would be divided into the two categories below. Each type of program would be provided in one or more residential treatment facilities of 5 to 20 adults each. Physical restraints would be limited to optional alarms on doors or windows and those necessary to keep people safe until emergency responders arrived.

- A *class 1 adult residential psychiatric program* would be a sub-acute program for high acuity individuals who did not meet criteria for psychiatric hospitalization. Care would include psychiatric supervision, case management, and similar services.
- A *class 2 adult residential psychiatric program* would be a program for individuals with moderate to high acuity with lesser needs than those in class 1. Care would be similar to that provided at a class 1 program, but would include the following differences:
 - Individual verbal therapy would be provided as needed instead of one hour per week.

- Evaluation by a qualified mental health clinician would occur weekly instead of daily.
- Behavioral and social support services would not have to include one-to-one monitoring or line of sight monitoring, as they would for class 1.
- Class 2 programs would offer vocational counseling and support as needed and desired by the resident.

Staff members could not administer medication to residents, but the bill would allow them to do all of the following, except in a facility with a class 1 residential psychiatric program:

- Remind a resident when to take medication and watch to ensure that the patient follows the directions on the container.
- Assist a resident in the self-administration of medication by taking the medication from a locked storage area, handing it to the resident, and, if necessary, opening the container.
- Assist a physically impaired but mentally alert resident in consuming or applying oral or topical medication, upon request by or with the consent of the resident.

Licensure

A separate building on the same campus or immediately contiguous property providing residential psychiatric care under the same management would not need to obtain a separate residential treatment program license.

Generally, an *operator* would have to apply to the Department of Licensing and Regulatory Affairs (LARA) for licensure of a residential treatment facility and pay the nonrefundable application fee. However, a person may not apply if a previous residential psychiatric program license had been revoked or denied renewal, unless at least two years had passed since the revocation or nonrenewal or the revocation or nonrenewal was not because of a violation of a resident's right to be free from abuse, neglect, or exploitation.

Operator would mean the person, firm, partnership, agency, governing body, association, corporation, or other entity that is responsible for the administration and management of a residential treatment facility and that applies for a residential treatment facility license.

LARA could issue a full license (for up to three years after issuance), a probationary license (for a shorter period of time as specified), or an interim license (for 90 days). An operator would have to submit a renewal application as well as a nonrefundable fee.

LARA could revoke or refuse to issue or renew a license, or issue an order to suspend admitting residents to the program, if it found any of the following:

- The program was not in compliance with the rules promulgated under the proposed act.
- A program had been cited for a pattern of serious noncompliance or repeated violations of statutes or rules during the current or previous period of licensure.
- The applicant or licensee submitted false or misleading information as part of a license application, renewal, or investigation.

Denial or revocation proceedings would have to proceed as provided in the Adult Foster Care Facility Licensing Act. (An order issued by LARA would remain in effect during these proceedings.)

Interim licensure

LARA could issue an interim license to operate a residential psychiatric program if it determined (1) that an emergency situation required removal of residents and there was insufficient program availability and (2) that the applying facility met applicable standards. An interim license would be valid for 90 days and could be renewed up to two times. Denial or revocation proceedings for an interim license would not be subject to the Adult Foster Care Licensing Act.

Inspections

LARA could inspect residential psychiatric programs before issuing or renewing a license, upon receiving a complaint, to determine whether the program had completed a correction plan and corrected deficiencies, or at the LARA director's discretion. When conducting the inspection, LARA could conduct an on-site examination and evaluation of the facility and program, and would have to have access to all records, accounts, and other documents, as well as access to staff and residents. LARA would then have to complete a report, listing any deficiencies and a time table for correcting them, as appropriate.

Entering a residential treatment facility

A director-designated LARA employee, or an employee of a community mental health program if that program had a resident in the facility, could enter a residential treatment facility at any time. Those individuals would have to be given access to examine and copy all records, accounts, and documents related to operating the facility and pertaining to residents. Additionally, for purposes of investigation, a LARA employee could enter a structure that had been reported to LARA as, or was suspected of, operating as a residential psychiatric program without a valid license.

Complaints

Under the bill, LARA could withhold the source of a complaint if it determined that the identity could jeopardize the investigation. However, it could disclose the source if the complainant agreed in writing, and would have to disclose upon court order. Unless the complainant had acted in bad faith or with malicious purpose, the person would be immune from civil liability and would not be subject to criminal prosecution.

Injunction for operation of unlicensed operation of residential psychiatric program

If the LARA director determined that there was a health or safety concern for participants, he or she could petition the facility's local county court to enjoin a person from operating a residential psychiatric program without a license and, if substantiated, the court could grant injunctive relief. If the court granted injunctive relief, it would have to issue an order enjoining the program from admitting new participants and an order requiring the program to assist with relocation of residents.

Penalties

The LARA director could fine a person \$500 for the first violation of the act and \$1,000 for each subsequent violation.

Receivership

If petitioned by the LARA director, the court could appoint a receiver to take possession of and operate a facility as a residential psychiatric program when there was found to be a health or safety risk to residents. The petition for receivership would have to include information as to risk, the absence of other adequate remedies, and other identifying information. Then, the court would give notice of the filing to the program's license-holder, and a hearing on the petition would have to take place within five days.

If the appointment of a receiver were deemed warranted, the court would notify LARA and other appropriate people. The court could generally authorize the receiver to do all things necessary and prudent to operate the program safely and efficiently, but would have to require the receiver to obtain court approval before making a single expenditure of more than \$5,000 to correct deficiencies in the structure or furnishings of a facility. The court would have to review the conduct of the receiver and require regular and detailed reports.

The receivership would have to be terminated if the court determined that the residential psychiatric program had been closed and the former residents relocated to an appropriate facility or if circumstances presenting a substantial risk of physical or mental harm no longer existed at the treatment facility and there was no likelihood of future risk of harm.

Except for LARA, a party or person interested in the action could not be appointed a receiver. The LARA director would have to maintain a list of names of qualified receivers for use by the court and would have to provide technical assistance to an appointed receiver.

A receiver would have to be sworn to perform the duties faithfully and execute a bond to secure the receiver's obligations. Under the control of the appointing court, a receiver could do the following:

- Bring and defend an action in the appointee's name as receiver.
- Take and keep possession of the property.

The court would have to authorize the receiver to do all of the following:

- Collect payment for all goods and services provided to the residents or others during the period of receivership.
- Honor all leases, mortgages, and secured transactions governing buildings, goods, and fixtures of which the receiver had taken possession, with certain exceptions.
- If transfer of residents was necessary, provide for the orderly transfer of residents by cooperating with state and local agencies, providing transportation for the residents' belongings, helping to locate alternative placements and develop transfer plans, and encouraging residents or guardians to participate in transfer planning.
- Make periodic reports on the status of the residential treatment facility to the court and appropriate state agencies. (These reports would have to be made available to residents, their guardians, and their families.)

- Compromise demands or claims.
- Generally perform acts respecting the residential treatment facility as the court authorizes.

The bill would take effect 90 days after enactment.

FISCAL IMPACT:

House Bill 4052 would have an indeterminate, though likely significant, fiscal impact on the Department of Licensing and Regulatory Affairs (LARA). LARA would be responsible for licensing and inspecting residential psychiatric programs and for providing technical assistance to court-appointed receiverships. The cost of these activities is presently indeterminate. The bill would allow the department to set application and licensing fees by administrative rule. Presumably, LARA would set fees at such a level that departmental costs would be sufficiently offset. The department would also have the ability to fine persons for violating the act, with a \$500 fine for a first offense and a \$1,000 fine for each subsequent offense. The bill does not specify where fine revenues would be deposited or how they could be used. The net fiscal impact would depend on whether fee revenues are sufficient to cover departmental expenses for administering the bill.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.