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BILL ANALYSIS

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Senate Bill 227 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Dan Lauwers
Committee: Health Policy

Date Completed: 11-6-23

CONTENT

The bill would amend 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.

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.

Currently, 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 may place a minor child in personal restraint or seclusion as provided below but must not use mechanical restraint or chemical restraint.

(Seclusion" means 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 would modify the definition of "seclusion" to specify that it did not include techniques for therapeutic de-escalation.)

Firstly, a child caring institution must 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 may 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 are in personal restraint or seclusion or who are being placed in personal restraint or seclusion.

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

competency requirements required by this subsection and the training and knowledge required of a licensed practitioner in the use of personal restraint and seclusion.

The bill would delete 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 contracted with and received payment from a community mental health services program or prepaid inpatient health plan, the child caring institution would have to comply with the rules for child caring institutions. The bill would allow emergency safety intervention in the form of physical management but would require the intervention to comply with the Mental Health Code and associated administrative rules.

("Emergency safety intervention" means the use of personal restraint or seclusion as an immediate response to an emergency safety situation. The bill would modify 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 were 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 would modify definitions. "Children's therapeutic group home" means a child caring institution receiving six minor children or less who are diagnosed with a developmental disability or a serious emotional disturbance as defined in the Code. The bill would modify 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 would be allowed but would need to comply with the Code and associated administrative rules.[1]

"Psychiatric residential treatment facility" (PRTF) would mean a facility other than a hospital that provided psychiatric services in an inpatient setting to individuals under the age of 21. Emergency safety intervention in the form of physical management would be allowed but would have to comply with the Code and associated administrative rules.

MCL 722.111 et al.

BRIEF RATIONALE

Children's therapeutic group homes are a type of child caring institution that is designated as a PRTF by the Center for Medicaid Services based on a policy submission from the State. A PRTF is a facility for adolescents (children under 18 years of age) who require care in a residential-type facility up to, and including, inpatient level of care. Some people believe that

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[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.

Michigan is currently experiencing a children's mental health crisis because of a lack of children's psychiatric inpatient beds. According to testimony, frequent difficulties with behavior management at children's therapeutic group homes require emergency restraint and seclusion rules. It has been suggested that these facilities abide by standards already in place in the Mental Health Code and administrative rules.

Legislative Analyst: Alex Krabill

FISCAL IMPACT

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

Fiscal Analyst: Humphrey Akujobi

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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.