

MAINE STATE LEGISLATURE

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L.D. 1025

Date: 5/7/19 Minority (Filing No. H-214)

HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "B" to H.P. 755, L.D. 1025, Bill, "An Act To Prohibit the Provision of Conversion Therapy to Minors by Certain Licensed Professionals"

Amend the bill by striking out everything after the enacting clause and inserting the following:

Sec. 1. 10 MRSA c. 233 is enacted to read:

CHAPTER 233

PROVIDING CONVERSION THERAPY TO MINORS

§1500-O. Prohibition; unlawful trade practice

1. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Aversive practice or treatment" means any practice or treatment that is intended to induce changes in behavior through unpleasant stimuli or punishment, including but not limited to the use of seclusion and isolation, ice baths or physical restraint. "Aversive practice or treatment" also includes the use of pornographic and other obscene materials that are produced for purposes other than providing education on human reproduction and sexuality as well as the use of electroconvulsive therapy for purposes that are not recognized as ethical and appropriate by the American Psychological Association or the American Psychiatric Association or successor organizations.

B. "Conversion therapy" means any aversive practice or treatment that seeks to change an individual's sexual orientation or gender identity, including any aversive practice or treatment that seeks to change gender expression or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. "Conversion therapy" does not include the following:

- (1) Talk therapy;

COMMITTEE AMENDMENT

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(2) Counseling intended to provide acceptance, support and understanding to the individual; or

(3) Counseling intended to facilitate the individual's coping, social support or identity exploration and development, including any therapeutic intervention that is neutral with regard to sexual orientation and that seeks to prevent or address unlawful conduct or unsafe sexual practices, as long as the counseling does not seek to change the individual's sexual orientation or gender identity.

C. "Sexual orientation or gender identity" has the same meaning as "sexual orientation" in Title 5, section 4553, subsection 9-C.

2. Prohibitions. A person may not advertise, offer or administer conversion therapy to individuals under 18 years of age.

3. Unfair trade practice. A violation of this chapter is a violation of the Maine Unfair Trade Practices Act.

Sec. 2. 20-A MRSA §13020, sub-§2-A is enacted to read:

2-A. Grounds for revocation or suspension of school psychologist or guidance counselor certificate. Evidence that a person has administered conversion therapy as defined in Title 10, section 1500-O, subsection 1, paragraph B to a child is grounds for revocation or suspension of that person's certificate issued under this Title as a school psychologist or guidance counselor.

Sec. 3. 20-A MRSA §13020, sub-§3, as enacted by PL 1983, c. 845, §4, is amended to read:

3. Denial of certificate for prior immoral conduct. Evidence that an applicant for initial certification or renewal has injured the health or welfare of a child through physical or sexual abuse or exploitation is grounds for a denial of a certificate. Evidence that an applicant for initial certification or renewal as a school psychologist or guidance counselor has administered conversion therapy as defined in Title 10, section 1500-O, subsection 1, paragraph B to a child is grounds for a denial of a certificate. Notwithstanding Title 5, chapter 341, every person, who, within 5 years of the application for initial certification or renewal, has been convicted in any state or federal court of a criminal offense involving the physical or sexual abuse or exploitation of a child, may be presumed by the commissioner to lack good moral character for the purposes of this chapter. This presumption ~~shall be~~ is a rebuttable presumption. Notwithstanding Title 5, chapter 341, the commissioner ~~shall be~~ is entitled to consider all records of prior criminal convictions involving child abuse or exploitation in determining an applicant's eligibility for a certificate.

Sec. 4. 22 MRSA §3174-BBB is enacted to read:

§3174-BBB. Coverage for conversion therapy

The department may not provide MaineCare reimbursement for conversion therapy as defined in Title 10, section 1500-O, subsection 1, paragraph B administered to a minor.

Sec. 5. 24 MRSA §2502, sub-§6, as enacted by PL 1985, c. 804, §§5 and 22, is amended to read:

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6. Action for professional negligence. "Action for professional negligence" means any action for damages for injury or death against any health care provider, its agents or employees, or health care practitioner, his the practitioner's agents or employees, whether based upon tort or breach of contract or otherwise, arising out of the provision or failure to provide health care services, except that "action for professional negligence" does not include an action brought pursuant to the Maine Unfair Trade Practices Act alleging a violation of Title 10, section 1500-O.

Sec. 6. 32 MRSA §2105-A, sub-§2, ¶I, as amended by PL 2015, c. 488, §11, is further amended to read:

I. Engaging in false, misleading or deceptive advertising; ~~or~~

Sec. 7. 32 MRSA §2105-A, sub-§2, ¶J, as enacted by PL 2015, c. 488, §12, is amended to read:

J. Failure to comply with the requirements of Title 22, section 7253-; or

Sec. 8. 32 MRSA §2105-A, sub-§2, ¶K is enacted to read:

K. A violation of section 2112.

Sec. 9. 32 MRSA §2112 is enacted to read:

§2112. Prohibition on providing conversion therapy to minors

An individual licensed or certified under this chapter may not administer conversion therapy as defined in Title 10, section 1500-O, subsection 1, paragraph B to a minor.

Sec. 10. 32 MRSA §2591-A, sub-§2, ¶N, as amended by PL 2015, c. 488, §15, is further amended to read:

N. Revocation, suspension or restriction of a license to practice medicine or other disciplinary action; denial of an application for a license; or surrender of a license to practice medicine following the institution of disciplinary action by another state or a territory of the United States or a foreign country if the conduct resulting in the disciplinary or other action involving the license would, if committed in this State, constitute grounds for discipline under the laws or rules of this State; ~~or~~

Sec. 11. 32 MRSA §2591-A, sub-§2, ¶O, as enacted by PL 2015, c. 488, §16, is amended to read:

O. Failure to comply with the requirements of Title 22, section 7253-; or

Sec. 12. 32 MRSA §2591-A, sub-§2, ¶P is enacted to read:

P. A violation of section 2600-D.

Sec. 13. 32 MRSA §2600-D is enacted to read:

§2600-D. Prohibition on providing conversion therapy to minors

An individual licensed under this chapter may not administer conversion therapy as defined in Title 10, section 1500-O, subsection 1, paragraph B to a minor.

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1 **Sec. 14. 32 MRSA §3282-A, sub-§2, ¶R**, as amended by PL 2015, c. 488, §18,
2 is further amended to read:

3 R. Failure to timely respond to a complaint notification sent by the board; ~~or~~

4 **Sec. 15. 32 MRSA §3282-A, sub-§2, ¶S**, as enacted by PL 2015, c. 488, §19, is
5 amended to read:

6 S. Failure to comply with the requirements of Title 22, section 7253-; or

7 **Sec. 16. 32 MRSA §3282-A, sub-§2, ¶T** is enacted to read:

8 T. A violation of section 3300-G.

9 **Sec. 17. 32 MRSA §3300-G** is enacted to read:

10 **§3300-G. Prohibition on providing conversion therapy to minors**

11 An individual licensed, registered or certified under this chapter may not administer
12 conversion therapy as defined in Title 10, section 1500-O, subsection 1, paragraph B to a
13 minor.

14 **Sec. 18. 32 MRSA §3837-A, sub-§1, ¶¶E and F**, as enacted by PL 2007, c.
15 402, Pt. Q, §14, are amended to read:

16 E. Practice by a licensed psychological examiner at a level requiring a psychologist's
17 license or any representation by a psychological examiner that that psychological
18 examiner is a psychologist; ~~or~~

19 F. Negligence in the performance of the licensee's duties-; or

20 **Sec. 19. 32 MRSA §3837-A, sub-§1, ¶G** is enacted to read:

21 G. A violation of section 3837-B.

22 **Sec. 20. 32 MRSA §3837-B** is enacted to read:

23 **§3837-B. Prohibition on providing conversion therapy to minors**

24 An individual licensed under this chapter may not administer conversion therapy as
25 defined in Title 10, section 1500-O, subsection 1, paragraph B to a minor.

26 **Sec. 21. 32 MRSA §6217-B, sub-§1**, as amended by PL 2017, c. 407, Pt. A,
27 §138, is further amended to read:

28 1. **Active use.** Active use of alcohol or any other drug that in the judgment of the
29 board is detrimental to the performance or competency of a licensee of the board; ~~or~~

30 **Sec. 22. 32 MRSA §6217-B, sub-§2**, as enacted by PL 2007, c. 402, Pt. U, §12,
31 is amended to read:

32 2. **Mental incompetency.** A legal finding of mental incompetency-; or

33 **Sec. 23. 32 MRSA §6217-B, sub-§3** is enacted to read:

34 3. **Prohibited conduct.** A violation of section 6223.

35 **Sec. 24. 32 MRSA §6223** is enacted to read:

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§6223. Prohibition on providing conversion therapy to minors

An individual licensed or certified under this chapter may not administer conversion therapy as defined in Title 10, section 1500-O, subsection 1, paragraph B to a minor.

Sec. 25. 32 MRSA §7006 is enacted to read:

§7006. Prohibition on providing conversion therapy to minors

An individual licensed under this chapter may not administer conversion therapy as defined in Title 10, section 1500-O, subsection 1, paragraph B to a minor.

Sec. 26. 32 MRSA §7059-A, sub-§§1 and 2, as enacted by PL 2007, c. 402, Pt. V, §14, are amended to read:

1. Addiction to the use of alcohol or other drugs. Addiction, as confirmed by medical findings, to the use of alcohol or other drugs, that has resulted in the licensed clinical, licensed master or licensed social worker or certified social worker - independent practice being unable to perform duties or perform those duties in a manner that would not endanger the health or safety of the clients to be served; ~~or~~

2. Mental incompetency. A medical finding of mental incompetency; ~~or~~

Sec. 27. 32 MRSA §7059-A, sub-§3 is enacted to read:

3. Prohibited conduct. A violation of section 7006.

Sec. 28. 32 MRSA §13742-A, sub-§1, ¶D, as amended by PL 2017, c. 434, §2, is further amended to read:

D. Engaging in false, misleading or deceptive advertising; ~~or~~

Sec. 29. 32 MRSA §13742-A, sub-§1, ¶E, as enacted by PL 2017, c. 434, §3, is amended to read:

E. Failing to comply with section 13800; ~~or~~

Sec. 30. 32 MRSA §13742-A, sub-§1, ¶F is enacted to read:

F. A violation of section 13800-B.

Sec. 31. 32 MRSA §13800-B is enacted to read:

§13800-B. Prohibition on providing conversion therapy to minors

An individual licensed under this chapter may not administer conversion therapy as defined in Title 10, section 1500-O, subsection 1, paragraph B to a minor.

Sec. 32. 32 MRSA §13861-A, sub-§1, ¶¶B and C, as enacted by PL 2007, c. 402, Pt. EE, §9, are amended to read:

B. A medical finding of mental incompetency; ~~and~~

C. Having had any professional or occupational license revoked for disciplinary reasons or any application rejected for reasons relating to untrustworthiness, within 3 years of the date of application; ~~and~~

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Sec. 33. 32 MRSA §13861-A, sub-§1, ¶D is enacted to read:

D. A violation of section 13866.

Sec. 34. 32 MRSA §13866 is enacted to read:

§13866. Prohibition on providing conversion therapy to minors

An individual licensed or registered under this chapter may not administer conversion therapy as defined in Title 10, section 1500-O, subsection 1, paragraph B to a minor.

Sec. 35. 32 MRSA §17307, sub-§§1 and 2, as enacted by PL 2007, c. 369, Pt. C, §3 and affected by §5, are amended to read:

1. Unfair or deceptive practices. Engaging in unfair or deceptive practices as defined by the rules established by the board or violating the code of ethics adopted and published by the board, including selling or causing to be sold a hearing aid to a person who has not been given tests such as pure tone, air and bone audiometry or other hearing assessments as determined by the board. The results of these tests must be permanently filed; ~~or~~

2. Negligence. Incompetence, negligence or neglect in the conduct of the practice of dealing in and fitting of hearing aids, including, but not limited to, the improper fitting of a hearing aid, the sale of a hearing aid to a person with normal hearing, making an ear mold impression or fitting an ear mold without prior inspection of the external ear canal, making an ear mold impression or fitting an ear mold after prior inspection revealed the presence of, or impacted, cerumen in the ear canal, the failure to indicate the need for medical or audiological evaluation when the prospective purchaser's history reveals a probable risk of disease or progressive hearing impairment, the failure to make the required medical referrals, the incorrect reporting of hearing test results to a person, the failure to be present to fit the final hearing aid in the ear of the purchaser and the tampering with a satisfactorily performing hearing aid owned by a purchaser or potential purchaser to cause that hearing aid to no longer perform correctly; or

Sec. 36. 32 MRSA §17307, sub-§3 is enacted to read:

3. Prohibited conduct. A violation of section 17311.

Sec. 37. 32 MRSA §17311 is enacted to read:

§17311. Prohibition on providing conversion therapy to minors

An individual licensed or registered under this chapter may not administer conversion therapy as defined in Title 10, section 1500-O, subsection 1, paragraph B to a minor.'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment is the minority report of the committee and replaces the bill. In place of the bill, the amendment incorporates the substance of L.D. 1296, An Act To Clarify the Scope of Practice of Certain Licensed Professionals Regarding Conversion Therapy.

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COMMITTEE AMENDMENT "B" to H.P. 755, L.D. 1025

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1. It defines "conversion therapy" as any aversive practice or treatment that seeks to change an individual's sexual orientation or gender identity. The amendment defines "aversive practice or treatment" as any practice or treatment that is intended to induce changes in behavior through unpleasant stimuli or punishment and provides examples of aversive practices or treatments.

2. It provides that advertising, offering or administering conversion therapy to individuals under 18 years of age in the State is an unfair trade practice. Court actions involving conversion therapy brought against health care providers under the Maine Unfair Trade Practices Act are not governed by the specialized procedures set forth in the Maine Health Security Act for actions involving professional negligence.

3. It prohibits school psychologists and guidance counselors, nurses, doctors, physician assistants, psychologists, psychological examiners, alcohol and drug counselors and aides, social workers, pharmacists and pharmacy technicians, professional counselors, marriage and family therapists, pastoral counselors, speech-language pathologists and assistants and audiologists from administering conversion therapy to individuals under 18 years of age. Administration of conversion therapy to an individual under 18 years of age in violation of this prohibition is grounds for discipline of the professional by the department or board that issued the professional's license, certification or registration, including but not limited to suspension or revocation of the license, certification or registration.

4. It prohibits MaineCare reimbursement for conversion therapy administered to an individual who is under 18 years of age.

FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



129th MAINE LEGISLATURE

LD 1025

LR 111(03)

An Act To Prohibit the Provision of Conversion Therapy to Minors by Certain Licensed Professionals

Fiscal Note for Bill as Amended by Committee Amendment *B(H-214)*
Committee: Health Coverage, Insurance and Financial Services

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - Other Special Revenue Funds

Minor savings - General Fund

Fiscal Detail and Notes

Additional costs to the regulatory boards either within or affiliated with the Department of Professional and Financial Regulation that are impacted by this legislation can be absorbed within existing budgeted resources. Any reduction in costs to the Department of Health and Human Services due to MaineCare being prohibited from funding conversion therapy are expected to be minor and will not impact existing budgeted resources.