

Legislative Analysis



EMERGENCY SAFETY INTERVENTION IN THE FORM OF PHYSICAL MANAGEMENT

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Senate Bill 227 (H-1) as adopted
Sponsor: Sen. Dan Lauwers
House Committee: Health Policy
Senate Committee: Health Policy
Complete to 5-2-24

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 50 of 2024)

SUMMARY:

Senate Bill 227 would amend the child care licensing act, 1973 PA 116, to allow emergency safety intervention in the form of physical management in certain child care organizations and require that those interventions comply with the Mental Health Code and associated administrative rules.

Children's therapeutic group homes

The bill would amend the definition of the term *children's therapeutic group home* for purposes of the act. Currently, a children's therapeutic group home is defined as a child caring institution that receives up to 6 children¹ diagnosed with a developmental disability or severe emotional disturbance and meets the following requirements:

- Provides care, maintenance, and supervision, usually on a 24-hour basis.
- Is not a private home.
- Is not located on a campus with other licensed facilities.
- Complies with the rules for child caring institutions, except that behavior management rooms, personal restraint, mechanical restraint, or seclusion, allowed under those rules in certain circumstances, are prohibited in a children's therapeutic group home.

The bill would revise the last bulleted item above to remove the general prohibition against behavior management rooms, personal restraint, mechanical restraint, or seclusion. The group home would still have to comply with the rules for child caring institutions. The bill would add that emergency safety intervention in the form of physical management is allowed but must comply with the Mental Health Code and associated administrative rules.

Psychiatric residential treatment facilities

The bill would add a definition for the term *psychiatric residential treatment facility* that provides the following:

Psychiatric residential treatment facility means a facility other than a hospital that provides psychiatric services, as described in 42 CFR 441.150 to 441.184, in an inpatient setting to individuals under the age of 21. Emergency safety intervention in the form of physical management is allowed but must comply with the Mental Health Code and associated administrative rules.

¹ The bill would use the term "children" here, instead of the defined term *minor children*. This would exclude individuals over the age of 18 who are included in the definition of *minor children* for certain facilities under the act.

Scope of sections 2b to 2e

Sections 2b to 2e of the act provide guidelines, limitations, and requirements regarding the use of personal restraint or seclusion. The act currently provides that those sections apply only to a child caring institution that contracts with or receives payment from a community mental health services program or prepaid inpatient health plan for the care, treatment, maintenance, and supervision of a minor child in that child caring institution.

The bill would remove this limitation.

Emergency safety intervention

For purposes of sections 2b to 2e only, the term *emergency safety intervention* is defined to mean use of personal restraint or seclusion (both also defined in the act) as an immediate response to an emergency safety situation.

The bill would add that use of personal restraint as an emergency safety intervention is not child abuse or child neglect unless it meets the definition of either of those terms in the Child Protection Law.

Seclusion

For purposes of sections 2b to 2e only, the term *seclusion* is defined to mean, with some exclusions, 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 who is there for the sole purpose of preventing the minor child from exiting the room.

The bill would add that techniques for therapeutic de-escalation are not considered *seclusion* under the act.

Child caring institutions

Section 2c of the act now provides that a child caring institution that contracts with and receives payment from a community mental health services program or prepaid inpatient health plan for the care, treatment, maintenance, and supervision of a minor child in that child caring institution may place a minor child in personal restraint or seclusion only as provided in sections 2c, 2d, and 2e, but cannot use mechanical restraint or chemical restraint (defined in the act).

The bill would instead provide that child caring institution described above must comply with the rules for child caring institutions, and that emergency safety intervention in the form of physical management is allowed but must comply with the Mental Health Code and associated administrative rules.

Training

The bill would remove provisions from section 2c that now require a child caring institution that contracts with and receives payment from a community mental health services program or prepaid inpatient health plan for the care, treatment, maintenance, and supervision of a minor child in that child caring institution to provide its staff with ongoing education and training in the use of personal restraint and seclusion and related topics.

MCL 722.111, 722.112b, and 722.112c

BRIEF DISCUSSION:

According to committee testimony, there is a current lack of children’s psychiatric inpatient beds in Michigan. Some have identified children’s therapeutic group homes as a way to address that issue and allow children who need that level of care to receive it in their own communities. However, because these homes are prohibited from using personal (i.e., physical) restraint, they can be challenging and even dangerous to operate. Reportedly, even things like physically preventing a child from running out into the street or stopping them from attacking other children is a license violation under current law.

The bill would allow those facilities to use personal restraint in emergency situations as long as it is compliance with the Mental Health Code and associated rules. The bill also would specify that therapeutic de-escalation (for example, when there is a fight or a child is acting out and an adult or clinician is with the child working through that process, even though the child may not be allowed to leave) is not a form of seclusion (for example, when a child is put alone into a room or other place and not allowed to leave).

By removing language that now limits the application of sections 2b to 2e to facilities receiving funding from community mental health services programs or prepaid inpatient health plans, the bill would ensure that juvenile detention centers are also subject to those provisions.

Finally, the bill would define *psychiatric residential treatment facilities (PRTF)* as licensed child caring institutions certified as PRTFs by the Centers for Medicare and Medicaid Services (CMS), and it would allow emergency safety interventions in those facilities.² According to committee testimony, those facilities are for adolescents under 18 who require care in a residential facility, up to and including an inpatient level of care.

Supporters of the bill argued that, by easing certain restrictions now faced by therapeutic group homes, the bill would expand the options available for children in need of therapeutic residential placement, and as a consequence would enable vulnerable children to receive essential therapy and support, ensure that children in crisis get the specialized care they need, reduce strain on families, and prevent further escalation of mental health issues.

HOUSE FLOOR ACTION:

The H-1 substitute for SB 227 is a “conflict substitute” that makes no substantive changes to the Senate-passed version of the bill. The substitute updates the section of law being amended to include changes made to that section by a recent amendatory act (2023 PA 173, part of the “filter first” package of bills to address drinking water in schools and child care centers).

Generally speaking, conflict substitutes resolve potential conflicts between different bills that amend the same section of law. Without a substitute that takes both bills into account, the last bill signed into law would overwrite and undo the changes made by the earlier bill.

² <https://www.cms.gov/medicare/health-safety-standards/certification-compliance/psychiatric-residential-treatment-facility-providers>

FISCAL IMPACT:

Senate Bill 227 would have no direct fiscal impact on the state or local units of government.

POSITIONS:

Representatives of the following entities testified in support of the bill (11-8-23):

- Department of Health and Human Services
- St. Clair County Community Mental Health

The following entities indicated support for the bill (11-8-23):

- Association of Accredited Child and Family Agencies
- Michigan Health and Hospital Association
- CMH Association of Michigan
- D.A. Blodgett – St. John’s Home

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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.