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

Reference to the Committee on Health Coverage, Insurance and Financial Services suggested and ordered printed.

Presented by Representative FECTEAU of Biddeford.
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 20-A MRSA §13020, sub-§2-A is enacted to read:

2-A. Grounds for discipline of a school psychologist or guidance counselor. Evidence that a person who is certified under this Title as a school psychologist or guidance counselor has advertised, offered or administered conversion therapy as defined in Title 32, section 59-C, subsection 1 to a child within the last 5 years is grounds for discipline of that person.

Sec. 2. 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 or prohibited 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 within the last 5 years 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 advertised, offered or administered conversion therapy as defined in Title 32, section 59-C, subsection 1 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 a rebuttable presumption. Notwithstanding Title 5, chapter 341, the commissioner shall be entitled to consider all records of prior criminal convictions involving child abuse or exploitation in determining an applicant's eligibility for a certificate.

Sec. 3. 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 32, section 59-C, subsection 1 administered to a minor.

Sec. 4. 32 MRSA §59-C is enacted to read:

§59-C. Definitions

As used in this Title, unless the context otherwise indicates, the following terms have the following meanings.

1. Conversion therapy. "Conversion therapy" means any practice or treatment that seeks or purports to change an individual's sexual orientation or gender identity, including, but not limited to, any effort to change gender expression or to eliminate or reduce sexual or romantic attractions, feelings or behavior toward individuals of the same gender. "Conversion therapy" does not include the following:
A. Any practice or treatment that assists an individual undergoing a gender transition;

B. Any practice or treatment that provides acceptance, support and understanding to an individual; and

C. Any practice or treatment that facilitates an individual's coping, social support or identity exploration and development, including any therapeutic treatment such as talk therapy that is neutral with regard to sexual orientation and gender identity 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.

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

Sec. 5. 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. 6. 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. 7. 32 MRSA §2105-A, sub-§2, ¶K is enacted to read:

K. A violation of section 2112.

Sec. 8. 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 advertise, offer or administer conversion therapy to a minor.

Sec. 9. 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. 10. 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. 11. 32 MRSA §2591-A, sub-§2, ¶P is enacted to read:
P. A violation of section 2600-D.

Sec. 12. 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 advertise, offer or administer conversion therapy to a minor.

Sec. 13. 32 MRSA §3282-A, sub-§2, ¶R, as amended by PL 2015, c. 488, §18, is further amended to read:

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

Sec. 14. 32 MRSA §3282-A, sub-§2, ¶S, as enacted by PL 2015, c. 488, §19, is amended to read:

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

Sec. 15. 32 MRSA §3282-A, sub-§2, ¶T is enacted to read:

T. A violation of section 3300-G.

Sec. 16. 32 MRSA §3300-G is enacted to read:

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

An individual licensed, registered or certified under this chapter may not advertise, offer or administer conversion therapy to a minor.

Sec. 17. 32 MRSA §3837-A, sub-§1, ¶¶E and F, as enacted by PL 2007, c. 402, Pt. Q, §14, are amended to read:

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

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

Sec. 18. 32 MRSA §3837-A, sub-§1, ¶G is enacted to read:

G. A violation of section 3837-B.

Sec. 19. 32 MRSA §3837-B is enacted to read:

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

An individual licensed under this chapter may not advertise, offer or administer conversion therapy to a minor.

Sec. 20. 32 MRSA §6217-B, sub-§1, as amended by PL 2017, c. 407, Pt. A, §138, is further amended to read:
1. Active use. Active use of alcohol or any other drug that in the judgment of the board is detrimental to the performance or competency of a licensee of the board; or

Sec. 21. 32 MRSA §6217-B, sub-§2, as enacted by PL 2007, c. 402, Pt. U, §12, is amended to read:

2. Mental incompetency. A legal finding of mental incompetency; or

Sec. 22. 32 MRSA §6217-B, sub-§3 is enacted to read:

3. Prohibited conduct. A violation of section 6223.

Sec. 23. 32 MRSA §6223 is enacted to read:

§6223. Prohibition on providing conversion therapy to minors

An individual licensed, certified or registered under this chapter may not advertise, offer or administer conversion therapy to a minor.

Sec. 24. 32 MRSA §7006 is enacted to read:

§7006. Prohibition on providing conversion therapy to minors

An individual licensed under this chapter may not advertise, offer or administer conversion therapy to a minor.

Sec. 25. 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. 26. 32 MRSA §7059-A, sub-§3 is enacted to read:

3. Prohibited conduct. A violation of section 7006.

Sec. 27. 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. 28. 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. 29. 32 MRSA §13742-A, sub-§1, ¶F is enacted to read:
F. A violation of section 13800-B.

Sec. 30. 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 advertise, offer or administer conversion therapy to a minor.

Sec. 31. 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

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

D. A violation of section 13866.

Sec. 33. 32 MRSA §13866 is enacted to read:

§13866. Prohibition on providing conversion therapy to minors

An individual licensed under this chapter may not advertise, offer or administer conversion therapy to a minor.

Sec. 34. 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 and 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. 35. 32 MRSA §17307, sub-§3 is enacted to read:


Sec. 36. 32 MRSA §17311 is enacted to read:

§17311. Prohibition on providing conversion therapy to minors

An individual licensed under this chapter may not advertise, offer or administer conversion therapy to a minor.

Sec. 37. Legislative findings; legislative intent.

1. Legislative findings. The Legislature finds that:

A. Conversion therapy is a practice or treatment, including but not limited to talk therapy, that seeks or purports to change a person's sexual orientation or gender identity. It is referred to by several names, including sexual orientation change efforts, reparative therapy and reintegrative therapy;

B. A wide range of the major health and mental health associations in the United States recognize being lesbian, gay, bisexual or transgender and having same-sex sexual attractions as normal variants of human sexuality and gender identity, rather than an illness or developmental disorder;

C. The medical and social science consensus is that conversion therapy is a harmful and ineffective practice or treatment. Conversion therapy is based on the false premise that being lesbian, gay, bisexual or transgender is a mental illness or disorder and is caused by a developmental deficiency, trauma, abuse or unmet emotional needs and that conversion therapy can alter a person's sexual orientation or gender identity;

D. There is no competent and reliable scientific evidence supporting claims that conversion therapy can change an individual's sexual orientation; rather, there is substantial competent and reliable scientific evidence that conversion therapy is ineffective and can and often does result in significant health and safety risks to consumers of those services, including depression, guilt, helplessness, hopelessness, shame, social withdrawal, suicidality and substance abuse, as well as economic losses;

E. The nation's leading medical and mental health professional organizations, including the American School Counselor Association, the American Psychiatric Association, the American Psychological Association, the American Psychoanalytic Association, the American Counseling Association Governing Council, the American Medical Association, the American Academy of Pediatrics, the American Academy of Family Physicians, the National Association of Social Workers and the Pan American Health Organization have concluded that conversion therapy is both ineffective in changing sexual orientation or gender identity and poses safety and health risks; and

F. The State has a compelling interest in protecting the physical and psychological well-being of minors, including the State's lesbian, gay, bisexual and transgender
youth and those youth seeking to examine or understand their sexual orientation or
gender identity, from the advertising, offering and administering of conversion
therapy and in protecting its minors from the serious health and safety harms that
conversion therapy can cause.

2. Legislative intent. It is the intent of the Legislature to protect the public health
and the safety of the lesbian, gay, bisexual and transgender youth of the State, and those
youth of the State who are seeking to examine or understand their sexual orientation or
gender identity, by prohibiting the advertising, offering and administering of therapy
designed to change a person's sexual orientation or gender identity, also known as
conversion therapy, to individuals under 18 years of age in the State.

SUMMARY

This bill does the following.

1. It defines "conversion therapy" as any practice or course of treatment that seeks or
purports to change an individual's sexual orientation or gender identity, except for any
practice or treatment that assists an individual undergoing a gender transition; any
practice or treatment that provides acceptance, support and understanding to an
individual; and any practice or treatment that facilitates an individual's coping, social
support or identity exploration and development, including any therapeutic intervention
that is neutral with regard to sexual orientation or gender identity, 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.

2. It prohibits certified 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 advertising, offering or administering
conversion therapy to individuals under 18 years of age. Advertising, offering or
administering 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.

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

4. It includes a statement of legislative findings and intent.