

OVERVIEW

THE AUDITOR
STATE OF HAWAII

Sunrise Analysis of a Proposal to Regulate Marriage and Family Therapists

Summary

We analyzed whether marriage and family therapists should be regulated as proposed in House Bill No. 764 introduced during the 1995 Regular Session. We concluded that regulation is not warranted, the scope of regulation in House Bill No. 764 is unclear, and the bill has other flaws.

Marriage and family therapists assist individuals and families with emotional, behavioral, and relationship problems. Therapists help people with difficulties of childhood and adolescence, marriages in crisis, families needing assistance with senior parents, domestic violence, physical and sexual abuse, substance abuse, and other areas.

House Bill No. 764 proposes to regulate the practice of marriage and family therapy with a seven-member licensing board in the Department of Commerce and Consumer Affairs. With some exceptions, no one could lawfully practice marriage and family therapy or use certain titles such as "marriage and family therapist" unless licensed by the State.

The Sunset Law says that professions and vocations should be regulated only when reasonably necessary to protect the health, safety, and welfare of consumers. In assessing the need for regulation, evidence of abuses must be given great weight and the benefits and costs of regulation to taxpayers must be considered.

The regulation of marriage and family therapists is not warranted. We found limited evidence of actual abuse and harm by marriage and family therapists in Hawaii. The benefits of licensing are uncertain. Licensing seeks to assure basic competency and would not address the potential harm, which consists principally of unethical and fraudulent behavior. Even if it were a significant problem, the competency of marriage and family therapists is difficult to assess.

Furthermore, most marriage and family therapists in Hawaii are clinical members of the American Association for Marriage and Family Therapy. The association may take disciplinary action against members who violate its ethical standards. Licensing does not seem justified simply on the basis of potential harm by a few non-members of the association.



In addition, regulation would be costly. A start-up appropriation of \$50,000 might be needed and application/license fees to support the program could run between \$2,000 and \$3,000 per person. We believe the State should not allocate its limited resources to establish regulation of marriage and family therapists when the benefits of regulation are so uncertain. Moreover, charging fees to cover the State's costs could severely restrict entry into the occupation.

The scope of regulation in House Bill No. 764 is also unclear. A basic problem with regulating marriage and family therapists is that the practice cannot be defined with any precision. The definition of marriage and family therapy in the bill is too broad to be enforceable. For example, the bill says these therapists provide diagnosis and treatment "within the context of marriage and family systems." The term "family systems" is subject to interpretation.

The bill also contains confusing and questionable exemptions. For example, it completely exempts persons who practice marriage and family therapy as part of their duties as employees of nonprofit organizations determined by the licensing board to meet community needs. Such exemptions allow some therapists to practice without meeting the standards applicable to private practitioners, a questionable approach. Furthermore, the exemption gives the board too much discretion to determine what organizations meet community needs.

We believe the unclear scope of regulation in House Bill No. 764 reflects confusion and a lack of consensus both nationally and in Hawaii about the nature of marriage and family therapy and how it should be regulated, if at all.

Furthermore, the bill has other deficiencies. The licensing board lacks a sufficient number of public members. The bill also contains restrictive licensing requirements, inappropriate examination provisions, and a questionable provision on morality.

Recommendation and Response

We recommend that House Bill No. 764 not be enacted.

The Department of Commerce and Consumer Affairs supports our analysis of the substantive provisions of the bill. It says it shares concerns with the lack of fairness, equitability, and consistency in the proposed licensing program. It notes that the major issues raised would make this a "very problematic regulatory program to implement."

Marion M. Higa
State Auditor
State of Hawaii

Office of the Auditor
465 South King Street, Room 500
Honolulu, Hawaii 96813
(808) 587-0800
FAX (808) 587-0830