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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 616 (as enrolled)

PUBLIC ACT 167 of 1990

Sponsor: Senator Ed Fredricks

Senate Committee: Education and Mental Health

House Committee: Mental Health

Date Completed: 1-29-91

RATIONALE

Mental health facilities--such as mental hospitals, psychiatric units, and psychiatric hospitals--are required to conduct professional reviews in order to be certified and to be eligible for Medicaid and Blue Cross/Blue Shield reimbursement. Such reviews are tools to assist these facilities in evaluating whether appropriate clinical procedures are being followed by a hospital and its staff. In the course of conducting professional reviews, medical professionals who serve on the review committee compile records and data about medical procedures and personnel at a facility. According to the Department of Mental Health, there have been situations in which medical personnel, whose professional performances were evaluated as a part of a review, obtained information that was gathered for the review and sued members of the review panel because of the allegedly derogatory nature of the information. Some people fear that the threat of being sued will have a chilling effect on the ability of review committee members to present an honest appraisal of a medical professional's performance, unless the records and data collected for the review are protected and considered confidential.

CONTENT

The bill would amend the Mental Health Code to require the owner, operator, and governing body of a mental hospital, psychiatric hospital, or psychiatric unit licensed under the Code or operated by the Department of Mental Health to

"assure that licensed, registered, or certified mental health professionals admitted to practice in the mental hospital, psychiatric hospital, or psychiatric unit are organized to enable an effective review of the professional practices" in that facility in order to improve the quality of patient care provided in the facility. This review would have to include the quality and appropriateness of the care provided.

The records, data, and knowledge collected for or by individuals or committees assigned a review function under the bill would be confidential, could be used only for the purposes of professional review, would not be public records, and would not be subject to court subpoena.

The Code currently provides that information in the record of a recipient of mental health services, and other information acquired in the course of providing services, must be kept confidential and cannot be open to public inspection. The Code permits disclosure, however, pursuant to a subpoena or court order, to a prosecutor, or to the recipient's attorney (MCL 330.1748). The bill specifies that it would not prevent disclosure of individual case records pursuant to these provisions of the Code, or disclosure required by Federal law to the agency designated by the Governor to provide protection and advocacy of the rights of persons with developmental disabilities pursuant to the Federal Developmentally Disabled Assistance Bill of Rights Act (under MCL 330.1931).

S.B. 616 (1-29-91)

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

ARGUMENTS

Supporting Argument

Professional reviews are designed to help clinical staff evaluate the services being delivered at a mental health facility. Integral to the review process is an examination of treatment procedures and administrative actions. Medical professionals who serve on review panels should be free to make honest evaluations, which can be substantiated with records and data collected for the review. These panel members should not have to fear legal action for their participation in a review. Confidentiality protections, which are similar to those proposed in Senate Bill 616, already exist for documentation collected as part of professional reviews conducted at medical facilities licensed by the Department of Public Health. These protections should be extended to data collected for reviews of mental health facilities in order to ensure the integrity of the reviews.

Response: Some people believe that these protections should be applied to community mental health boards as well.

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