



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 1048 (as enrolled)
 Sponsor: Senator Joel D. Gougeon
 Senate Committee: Families, Mental Health and Human Services
 House Committee: Mental Health

PUBLIC ACT 588 of 1996

Date Completed: 1-29-97

CONTENT

The bill amended the Mental Health Code to specify that a county's immunity from liability for acts or obligations of a community mental health authority applies only to county government; extend a county's exemption from financial liability to services provided to a criminal defendant determined incompetent to stand trial or to an individual acquitted of a criminal charge by reason of insanity; specify a deadline for second opinions concerning hospitalization; specify procedures for issuing orders of involuntary treatment; specify procedures for the court to order a report of alternatives to hospitalization; revise requirements concerning combined treatment and review of a recipient's status as a person continuing to need treatment; allow a person to be secluded in a child caring institution under the conditions specified in the Code; revise notification procedures concerning the use of psychotropic drugs; and specify a deadline for the disclosure of information to certain individuals.

The bill repealed provisions pertaining to alternatives to hospitalization, combined hospitalization and alternative treatment, hospitalization orders, alternative treatment, periodic hearing and petition for discharge, and continuing involuntary mental health treatment.

Following is a more detailed description of the bill.

Merger of Established Programs

The Code allows a county with an established community mental health services program (CMHSP) to elect to merge with an established CMHSP in an adjoining county. The merger has to be approved by a majority vote of the board of commissioners of each participating county.

Previously, the merger became effective on January 1 immediately following the date of final approval, and the resulting community mental health authority had to be created in accordance with the Code's provisions concerning the establishment of community mental health authorities.

The bill specifies that a merger will become effective on the first day of January, April, July or October immediately following the date of final approval, rather than just January 1, and requires that the merger and creation of a community mental health authority be according to Act's provisions concerning the merger of established programs and the creation of a board of directors for the resulting authority.

Alternatives to Hospitalization

The bill requires the court to order a report assessing the current availability and appropriateness of alternatives to hospitalization for an individual, including alternatives available following an initial period of court-ordered hospitalization. The report must be ordered whenever the court receives an application for hospitalization, a clinical certificate executed by a physician or a licensed psychologist and a clinical certificate executed by a psychiatrist; a petition for a determination that a person requires require treatment, a clinical certificate executed by a physician or a licensed psychologist and a clinical certificate executed by a psychiatrist; a petition for a determination that an individual continues to be a person requiring treatment and a clinical certificate executed by a psychiatrist; a petition for discharge from continuing involuntary mental health treatment; a petition for discharge from continuing involuntary mental health treatment and a physician's or a licensed psychologist's clinical certificate; or a demand or notification that a

hearing that has been temporarily deferred be convened. The report must be prepared by the CMHSP, a public or private agency, or another individual found suitable by the court. In deciding which individual or agency should be ordered to prepare the report, the court must give preference to an agency or individual familiar with the treatment resources in the individual's home community.

The bill also specifies that before ordering a course of treatment for an individual found to require treatment, the court must review a report on alternatives to hospitalization not more than 15 days before the court issues the order. After reviewing the report, the court must inquire as to the individual's desires regarding alternatives to hospitalization, determine whether there is an agency or mental health professional available to supervise the individual's alternative treatment program, and determine whether a treatment program that is an alternative to hospitalization or that follows an initial period of hospitalization is adequate to meet the individual's treatment needs and is sufficient to prevent harm that the individual may inflict upon himself or herself or upon others within the near future.

If the court determines that there is a treatment program that is an alternative to hospitalization that is adequate to meet the individual's treatment needs and prevent harm that the individual may inflict upon himself or herself or upon others within the near future and that an agency or mental health professional is available to supervise the program, the court must issue an order for alternative treatment or combined hospitalization and alternative treatment. The order must state the CMHSP or, if private arrangements have been made for the reimbursement of mental health treatment services in an alternative setting, the name of the mental health agency or professional that is directed to supervise the individual's alternative treatment program. The order may provide that if an individual refuses to comply with a psychiatrist's order to return to the hospital, a peace officer must take the individual into protective custody and transport the individual to the hospital selected.

CMHSP Board

The bill requires the CMHSP board to carry forward any surplus of revenue over expenditures under a capitated managed care system. Capitated payments under a managed care system are not subject to the cost settlement

provisions specified in the Code. (The Code requires the Department of Community Health to review the expenditures of each community mental health services program at intervals during the year, and reallocate funds if it finds that the funds are not needed by the program to which they were originally allocated.)

Community Mental Health Authority

The bill deleted a provision that the privileges, immunities from liability, and exemptions from laws, ordinances, and rules that are granted to a community mental health authority created under the Code and its board members, officers, agents and employees did not include the immunity granted to a county.

The Code provides that a county that has created a community mental health authority is not liable for any intentional, negligent, or grossly negligent act or omission, for any financial affairs, or for any obligation of a community mental health authority, its board, employees, representatives, or agents. The bill specifies that this provision applies only to county government.

Local Match

The Code specifies that a county is financially liable for 10% of the net cost of any service that is provided by the Department, directly or by contract, to a resident of that county. This provision, however, does not apply to family support subsidies established under the Code, or to a service provided to an individual under criminal sentence to a State prison. The bill added that the provision does not apply to a criminal defendant determined incompetent to stand trial or to an individual acquitted of a criminal charge by reason of insanity, during the initial 60-day period of evaluation as provided in the Code. (The Code requires the court immediately to commit any person who is acquitted of a criminal charge by reason of insanity to the custody of the Center for Forensic Psychiatry, for a period of up to 60 days.)

Preadmission Screening Units

Under the Code, if the preadmission screening unit of the community mental health services program denies hospitalization, the individual may request a second opinion from the executive director, who is required to arrange for an additional evaluation by a psychiatrist, other physician, or licensed psychologist. Previously, this had to be done as soon as possible. The bill requires that the

evaluation be performed within three days, excluding Sundays and legal holidays, after the executive director receives the request.

The Code also specifies that if the conclusion of the second opinion is different from the conclusion of the preadmission screening unit, the executive director, in conjunction with the medical director, must make a decision based on all clinical information available. The bill added that the executive director's decision has to be confirmed in writing to the individual who requested the second opinion, and the confirming document must include the signatures of the executive director and medical director or verification that the decision was made in conjunction with the medical director.

Involuntary Treatment

The bill specifies that upon receiving an application for hospitalization or a petition for treatment and a finding that an individual requires treatment, the court must issue an initial order of involuntary mental health treatment. The order must be limited in duration as follows:

- An initial order of hospitalization may not exceed 60 days.
- An initial order of alternative treatment may not exceed 90 days.
- An initial order of combined hospitalization and alternative treatment may not exceed 90 days. The hospitalization portion of the initial order may not exceed 60 days.

Upon receiving a petition for continuing involuntary mental health treatment before the expiration of an initial order and a finding that the individual continues to require treatment, the court must issue a second order for involuntary mental health treatment, subject to the following limits:

- A second order of hospitalization may not exceed 90 days.
- A second order of alternative treatment may not exceed one year.
- A second order of combined hospitalization and alternative treatment may not exceed one year. The hospitalization portion of the second order may not exceed 90 days.

Upon receiving a petition before the expiration of a second order and a finding that the individual continues to require treatment, the court must issue a continuing order for involuntary mental health treatment, subject to the following:

- A continuing order of hospitalization may not exceed one year.
- A continuing order of alternative treatment may not exceed one year.
- A continuing order of combined hospitalization and alternative treatment may not exceed one year. The hospitalization portion of the order may not exceed 90 days.

Upon receiving a petition for continuing involuntary mental health treatment before the expiration of a continuing order of involuntary mental health treatment, including a continuing order after a hearing to determine the disposition of a patient or a one-year order of hospitalization, and a finding that the individual continues to require treatment, the court must issue another continuing order for involuntary mental health treatment for a period of up to one year. The court must continue to issue consecutive one-year continuing orders for involuntary mental health treatment until a continuing order expires without a petition for continuing treatment having been filed or the court finds that the individual is not a person requiring treatment.

If a petition for an order of involuntary mental health treatment is not brought at least 14 days before the expiration of an order of involuntary mental health treatment, a person who believes that an individual continues to require treatment may file a petition for an initial order of involuntary mental health treatment.

An individual who on March 28, 1996, was subject to an order of continuing hospitalization for an indefinite period of time must be brought for hearing no later than the date of the second six-month review occurring after March 28, 1996. If the court finds at the hearing that the individual continues to require treatment, the court must enter an order authorizing continuing mental health treatment.

Petition for Involuntary Treatment

The Code required that a petition for an order authorizing 90-day, one-year, or continuing involuntary mental health treatment contain a statement setting forth the reasons for the hospital director's or executive director's or their joint determination that the person continued to need treatment. The bill specifies, instead, that not less than 14 days before the expiration of an initial, second, or continuing order of involuntary mental health treatment, a hospital director or an agency

or mental health professional supervising an individual's alternative treatment must file a petition for a second or continuing order of involuntary mental health treatment if the hospital director or supervisor believes that the individual continues to require treatment and that the individual is likely to refuse treatment on a voluntary basis when the order expires. The bill also requires that the statement in the petition contain the hospital director's or the supervisor's, rather than the executive director's, reasons for the determination to continue treatment.

Combined Treatment

The bill specifies that if an individual is subject to a combined order of hospitalization and alternative treatment, the decision to release him or her from the hospital to the alternative treatment program must be a clinical decision made by a psychiatrist designated by the hospital director in consultation with the director of the alternative program. If the hospital is operated by, or under contract with, the Family Independence Agency (FIA) or a CMHSP and private payment arrangements have not been made, the decision must be made in consultation with the treatment team designated by the executive director of the CMHSP. Notice of the individual's return to the alternative treatment program must be provided to the court with a statement from a psychiatrist explaining that the individual is clinically appropriate for alternative treatment. At least five days before releasing an individual from the hospital to the alternative treatment program, the hospital director must notify the agency or mental health professional responsible to supervise the individual's alternative treatment program that the individual is about to be released. The hospital must share relevant information about the individual with the supervising agency or professional for the purpose of providing continuity of treatment.

If there is a disagreement between the hospital and the executive director regarding the decision to release the individual to the alternative treatment program, either party may appeal in writing to the FIA Director within 24 hours of the decision. The FIA Director must designate the psychiatrist responsible for clinical affairs in the FIA, or his or her designee, who also must be a psychiatrist, to consider the appropriateness of the release and make a decision within 48 hours after receiving the written appeal. Either party may appeal the decision of the FIA to the court in writing within 24 hours, excluding Sundays and holidays, after the FIA decision.

The bill specifies that if private arrangements have been made for the reimbursement of mental health treatment services in an alternative setting and there is a disagreement between the hospital and the director of the alternative treatment program regarding the decision to release the individual, either party may petition the court for a determination of whether the individual should be released from the hospital to the alternative treatment program. The court must make a decision within 48 hours, excluding Sundays and holidays, after receiving a written appeal or a petition. The court must consider information provided by both parties and may appoint a psychiatrist to provide an independent clinical examination.

During the period of an order of combined hospitalization and alternative treatment, hospitalization may be used as clinically appropriate and when ordered by a psychiatrist, for up to the maximum period for hospitalization specified in the order. The decision to hospitalize the individual must be made by the director of the alternative treatment program, who must notify the court when the individual is hospitalized. The notice to the court must include a statement from a psychiatrist explaining the need for hospitalization.

During the period of an order for alternative treatment or combined hospitalization and alternative treatment, the agency or mental health professional who is supervising an individual's alternative treatment program must notify the court immediately if the agency or professional determines that the individual is not complying with the court order, or that the alternative treatment has not been or will not be sufficient to prevent harm that the individual may inflict on himself or herself or upon others. If the individual believes that the alternative treatment program is not appropriate, he or she may notify the court of that fact.

If the court becomes aware that an individual subject to an order of alternative treatment or combined hospitalization and alternative treatment is not complying with the order, that the alternative treatment has not been or will not be sufficient to prevent harm to the individual or to others, or that the individual believes that the alternative treatment program is not appropriate, the court may do either of the following without a hearing and based upon the record and other available information:

- Consider other alternatives to hospitalization and modify the order to direct the individual to undergo another program of alternative treatment for the duration of the order.
- Modify the order to direct the individual to undergo hospitalization or combined hospitalization and alternative treatment. The duration of the hospitalization, including the number of days the individual already has been hospitalized if the order being modified is a combined order, must not exceed 60 days for an initial order or 90 days for a second or continuing order. The modified order may provide that if the individual refuses to comply with the psychiatrist's order to return to the hospital, a peace officer must take the individual into protective custody and transport the individual to the hospital selected.

If an individual is hospitalized without a hearing after placement in an alternative treatment program, he or she has a right to object to the hospitalization. Upon transfer of the individual to the hospital, the hospital must notify the individual of his or her right to object to the hospitalization. Upon receiving an objection to a hospitalization, the court must schedule a hearing for a determination that the individual requires hospitalization.

Review of Current Status

The Code specified that each individual subject to an order of continuing involuntary mental health treatment had the right to regular, adequate, and prompt review of his or her current status as a person requiring treatment. Six months from the date of an order of continuing involuntary mental health treatment, and every six months thereafter, the executive director of the CMHSP responsible for treatment had to assign a physician or licensed psychologist to review the individual's clinical status. The bill applies these provisions only to a one-year order of involuntary treatment, deleted the requirement that the review be regular, and specifies that either the CMHSP executive director, or if private arrangements for the reimbursement of mental health treatment services have been made, the hospital director or director of the alternative treatment program must assign the physician or licensed psychologist to review the case.

Results of Periodic Review

The Code required the executive director to notify an individual and his or her attorney, nearest relative, guardian or other designated person of the results of a review of the individual's record and his or her right to petition for discharge. The bill requires either the executive director or the director of the hospital or treatment program with which private reimbursement arrangements have been made to notify the specified individuals.

Disposition of Patient

The Code specified that if, upon a hearing, the court found that an individual under an order of continuing involuntary mental health treatment no longer required treatment, the court had to enter a finding to that effect and order the individual to be discharged. The bill applies this requirement to any order of involuntary mental health treatment, not just an order of continuing treatment.

The Code also specifies that if the individual were found to continue to need treatment, the court could continue the order, issue a new order for continuing hospitalization not to exceed one year, or issue a new order for continuing alternative treatment for a period not to exceed one year or combined hospitalization and alternative treatment for up to one year. The bill specifies, instead, that if the court finds that an individual under a one-year order of involuntary treatment continues to require treatment, the court must continue the order or issue a new continuing order for involuntary treatment according to the bill's provisions concerning continuing orders.

Hospitalization of Minors

Under the Code, if the children's diagnostic and treatment service of a CMHSP denies hospitalization for a minor, or the preadmission screening unit of a CMHSP denies emergency hospitalization for a minor, the parent or guardian of the minor may request a second opinion from the executive director. Previously, the executive director had to arrange for an additional evaluation as soon as possible. The bill specifies that the additional evaluation must be performed within three days, excluding Sundays and legal holidays, after the executive director receives the request. Further, the bill requires the executive director's

decision to be confirmed in writing to the individual who requested the second opinion and the confirming document to include the signatures of the executive director and medical director or verification that the decision was made in conjunction with the medical director.

Individualized Plan of Services

The Code requires the responsible mental health agency for each recipient to ensure that a person-centered planning process is used to develop a written individual plan of services in partnership with the recipient. The individual plan, which consists of a treatment plan, a support plan, or both had to be developed within seven days of the commencement of services or, if an individual was hospitalized, before discharge or release. The bill requires that a preliminary plan, rather than the individual plan, be developed within seven days of the commencement of services or, if the individual is hospitalized for less than seven days, before discharge or release. The Code required the individual plan to establish meaningful and measurable goals with the recipient; the bill requires the treatment plan to establish the goals. Under the Code, the individual plan had to include assessments of the recipient's need for food, shelter, clothing, health care, employment and educational opportunities where appropriate, legal services, and recreation. The bill requires the plan to address these issues as either desired or required by the recipient and includes the issue of transportation. The bill also expands the list of individuals who may request a review of a plan if the recipient is not satisfied with it to include the person authorized by the recipient to make decisions regarding the plan; the Code allowed only the recipient, his or her guardian, or the parent of a minor recipient to request the review.

Explanation of Psychotropic Drugs

The Code required the prescriber or, if the prescriber was not on site, an individual administering a drug to explain to the recipient the specific risk, if any, to the recipient of the most common adverse effects associated with any psychotropic medication prescribed for the recipient. The Act also required that a written summary of the most common adverse effects be provided to the recipient by the person dispensing the drug. A violation of these provisions constituted a misdemeanor punishable by a fine of \$100 or imprisonment for 90 days, or both.

The bill specifies instead that before initiating a course of psychotropic drug treatment for a recipient, the prescriber or a licensed health

professional acting under the delegated authority of the prescriber must explain the specific risks and the most common adverse effects that have been associated with that drug, and provide the individual with a written summary of the most common adverse effects associated with that drug. In addition, the bill deleted the penalty provisions.

Seclusion of Resident

The Code specified that seclusion could be used only in a hospital or a center, defined in the Code as a facility operated by the FIA to admit individuals with developmental disabilities and provide habilitation and treatment services. A resident could not be kept in seclusion except in the circumstances and under the conditions detailed in the Act. The bill specifies that seclusion may be used only in a hospital, a center, or a child caring institution licensed under the child care licensing Act. Further, the bill prohibits either a resident or an individual in a child caring institution from being kept in seclusion except in the circumstances and under the conditions specified in the Code.

Disclosure of Information

The Code specifies that information in the record of a recipient, and other information acquired in the course of providing mental health services to a recipient, must be kept confidential and must not be open to public inspection. For case record entries made after March 28, 1996, information made confidential must be disclosed to an adult recipient, upon his or her request, if he or she does not have a guardian and has not been adjudicated legally incompetent. The bill added that the holder of the record must comply with the adult recipient's request for disclosure as expeditiously as possible but in no event later than the earlier of 30 days after receiving the request, or, if the recipient is receiving treatment from the holder of the record, before the recipient is released from treatment.

MCL 330.1152 et al.

Legislative Analyst: L. Burghardt

FISCAL IMPACT

The bill contains a number of minor revisions to the Mental Health Code. The change with potential for a fiscal impact is the one that allows a hospital director to petition for continued involuntary hospitalization of up to one year if he or she believes it to be necessary. This is in addition

to the current petition system, which permits hospitalization for up to 90 days, alternative treatment combined with hospitalization for up to one year, or indefinite continued hospitalization. This provision could lead to longer hospital stays with indeterminate increased costs.

Fiscal Analyst: S. Angelotti

S9596\S1048ES

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.