

Legislative Analysis



DETROIT-WAYNE CO. CMHSP

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Senate Bills 591 and 1076 as passed by the Senate
Sponsor: Sen. Bev Hammerstrom

Senate Bill 1079 as passed by the Senate
Sponsor: Sen. Shirley Johnson

House Committee: Health Policy (Discharged)
Senate Committee: Health Policy

First Analysis (7-14-04)

BRIEF SUMMARY: Senate Bill 591 would amend the Social Welfare Act to require the Detroit-Wayne County CMHSP to be established as a CMH authority in order to contract with the DCH as a specialty prepaid health plan to provide specialty services and supports.

Senate Bills 1076 and 1079 would amend the Mental Health Code to require the Detroit-Wayne County CMHSP to be established as a CMH authority; and allow the DCH to require the CMHSP to become a CMH authority as a condition of certification. Senate Bills 1076 and 1079 are tie-barred to each other and to Senate Bills 1077, 1078, and 1080. (Those bills would revise the composition of the board of the Detroit-Wayne County CMH Agency; authorize the individual who appointed a board member to remove the member; and allow the DCH Director immediately to impose sanctions against the Detroit-Wayne County CMH Agency for failure to comply with standards for specialty prepaid health plans.)

FISCAL IMPACT: The bills would require a single-county community mental health board to become a CMH authority in order to contract to provide Medicaid mental health and substance abuse services. A single-county CMH board that was not reconstituted as a CMH authority by October 1, 2004, would no longer be eligible to provide Medicaid mental health and substance abuse services. If this occurred, other providers, either other CMH boards or private entities, would take over the provision of Medicaid services for that county. Such a change would have a clear but indeterminate fiscal impact on both the State and the county.

THE APPARENT PROBLEM:

Some people are concerned that a situation in southeastern Michigan could jeopardize the waiver the state receives from the U.S. Department of Health and Human Services allowing them to manage Medicaid specialty services for the seriously mentally ill, the developmentally disabled, and those with addictive disorders. The state has been operating under the waiver since 1998. Under the waiver, these Medicaid services are managed by specialty prepaid health plans (PHPs). Community mental health services

programs (CMHSPs) that serve at least 20,000 Medicaid recipients in a geographic area may contract with the Department of Community Health (DCH) to operate as the PHPs providing the services. (Programs that serve fewer than 20,000 Medicaid beneficiaries may form regional affiliations with other CMHSPs and submit a consolidated application for PHP designation.) Under the Mental Health Code, a CMHSP may be organized in three ways: as an agency of county government, as an organization under the Urban Cooperation Act, or as a community mental health (CMH) authority. The code states that a county CMH agency is an official county agency. A CMH organization or authority is a public governmental entity separate from the county or counties that establish it.

Reports of financial mismanagement and political infighting at the Detroit-Wayne County Community Mental Health Agency have raised concerns that the federal waiver might not be renewed, which could lead to the loss of Medicaid funding for the entire state and the contracting out of the specialty services to the lowest bidder. It has been suggested that public accountability and service delivery would be improved if the Detroit-Wayne County program were required to become a CMH authority, operating independently of Wayne County control.

THE CONTENT OF THE BILLS:

Senate Bill 591 would amend the Social Welfare Act (MCL 400.109h) to require the Detroit-Wayne County CMHSP to be established as a CMH authority in order to contract with the DCH as a specialty prepaid health plan to provide specialty services and supports.

Senate Bills 1076 and 1079 would amend the Mental Health Code (MCL 330.1204 and 1232a, respectively) to require the Detroit-Wayne County CMHSP to be established as a CMH authority; and to allow the DCH to require the CMHSP to become a CMH authority as a condition of certification. Senate Bills 1076 and 1079 are tie-barred to each other and to Senate Bills 1077, 1078, and 1080. (Those bills would revise the composition of the board of the Detroit-Wayne County CMH Agency; authorize the individual who appointed a board member to remove the member; and allow the DCH Director immediately to impose sanctions against the Detroit-Wayne County CMH Agency for failure to comply with standards for specialty prepaid health plans.)

The bills are described below in further detail.

Senate Bill 591

Effective October 1, 2004, the bill would require a CMHSP established by a single charter county that had situated totally within it a city having a population of at least 500,000 (i.e., Wayne County and the City of Detroit) to comply with Sections 204(4), 205, and 216 of the Mental Health Code before contracting with the DCH as a specialty prepaid health plan to provide specialty services and supports. Section 204(4) would be added to the Mental Health Code by Senate Bill 1076, which is described below.

Under Section 205 of the code, a county CMH agency or organization that is certified by the DCH may become a CMH authority through an enabling resolution adopted by the board of commissioners of each creating county after at least three public hearings held in accordance with the Open Meetings Act. Section 205 identifies powers that a CMH authority has in addition to the powers of a CMHSP.

Section 216 of the Mental Health Code provides for the composition of the Detroit-Wayne County CMHSP board. Currently, the board consists of 12 members. Six of the members are Detroit residents appointed by the city's chief executive officer. The remaining six members are Wayne County residents, not from Detroit, appointed by the county's chief executive officer with the advice and consent of the county board of commissioners. (Under Senate Bill 1077, however, the board would consist of two Detroit residents appointed by the mayor of Detroit, one Detroit resident appointed by the Detroit City Council, two Wayne County residents appointed by the county's chief executive officer, one Wayne County resident appointed by the county board of commissioners, two Wayne County residents appointed by the Governor with the advice and consent of the Senate, and one Wayne County resident appointed by the DCH Director.)

Senate Bill 1076

The bill would require the Detroit-Wayne County CMHSP to be established as a CMH authority as defined in Section 205 of the Mental Health Code.

Senate Bill 1079

The Mental Health Code prohibits the DCH from requiring a CMHSP to become a CMH authority as a condition of certification; CMH authority status is voluntary. The bill would make an exception to this provision in the case of the Detroit-Wayne County CMHSP.

HOUSE COMMITTEE ACTION:

The bills were discharged from the House Committee on Health Policy on 7-6-04. The bills are in the same form as they passed the Senate. Information in this analysis is derived from information in the Senate Fiscal Agency analysis of those versions dated 4-21-04. **See also the House Fiscal Agency summary of a related bill, House Bill 5630, also discharged from the House Committee on Health Policy on 7-6-04. That bill would change the composition of the Detroit-Wayne County CMHSP board.**

ARGUMENTS:

For:

The bills are a necessary step toward reforming a system said to be plagued by political infighting and a lack of financial accountability. The Detroit-Wayne County CMH Agency provides critical services related to housing, therapy, job training, transportation,

and medical assistance to approximately 75,000 people--about one-third of the state's mentally ill and developmentally disabled population. The agency's problems can threaten service delivery for consumers and their families and result in the expenditure of less money for the consumers who need assistance.

The organizational structure of the Detroit-Wayne County CMH Agency is unique. In other CMH agencies, county commissioners approve the funding and health plans of the CMH boards, and it is more readily apparent to the public who is accountable when problems arise. In the case of the Detroit-Wayne County CMH Agency, however, it is unclear who ultimately is responsible. For example, the agency's former interim executive director evidently was placed on administrative leave in November 2003, and denied access to office resources and personnel. She reportedly continues to preside over board meetings, however, and is recognized as the executive director by the DCH while the county executive replaced her with a chief operating officer and recognizes that person as the head of the agency. The board has filed a suit against the county executive, claiming he overstepped his authority in removing the interim executive director, and seeking clarity regarding who controls the agency.

Reportedly, over the last three years, the agency has accumulated a deficit of over \$17 million, for which Wayne County ultimately is liable. If the agency were converted to an authority, it would be responsible for its own debts. Also, there have been allegations that money intended for the mental health care system has been diverted to other Wayne County programs. Under an authority structure, the overall efficiency of the program would be improved and funding would more likely be used for its intended purposes. Evidently, the Detroit-Wayne County CMH Agency now must follow a 40-step procedure to have contracts approved by the Wayne County Board of Commissioners. Policies, practices, and personnel issues also require county approval. An authority, however, could own its own property, would have more control over personnel and oversight of contracts, and would have a greater ability to build infrastructure and manage a complicated set-up of services and populations. Overall, board members would be more responsive to consumers and the budget more understandable under an authority structure.

In order to remove the administration of mental health care from the political arena, more than one-half of the state's CMH agencies have converted to authority status. Streamlined procedures in Wayne County would eliminate some of the opportunities for delay in decision making due to political reasons. Perhaps most importantly, under an authority, it would be clear to consumers and taxpayers that the board and program administration were solely responsible for ensuring that public funds were spent on assistance for Wayne County consumers.

The Legislature instituted the current governing structure in 1974. The size of Wayne County's program increased significantly throughout the 1980s and 1990s as deinstitutionalization of mental health patients occurred. Mental health care needs in Wayne County present unique challenges. The current governing structure might work well for smaller entities, but not for a program the size of Wayne County's. In addition, the Wayne County program must provide integrated services over a broad geographic

area without a sufficient rapid transit system. Furthermore, the program is treating more severely impaired patients in a more intense regulatory environment than existed in 1974. The organizational structure instituted over 30 years ago is no longer appropriate for the Detroit-Wayne County CMH Agency.

Action at the state level is necessary because the problems occurring within the Detroit-Wayne County CMH Agency could jeopardize federal funding for Medicaid services statewide. The bills would ensure that governance of the agency was independent of political considerations and accountable to the public, and that public funds for the care of mentally ill people were directly under its control.

Against:

The bills would interfere with local control. The Wayne County executive is in the process of making changes to the system, such as introducing some basic accounting and contracting procedures. Although there still is room for progress, these measures already have resulted in improvement. For example, problems regarding timely payment to service providers largely have been solved. Payment now takes one to two days, and complaints from service providers have become rare. The agency also has been taking steps to streamline operations. It has reduced the number of service providers from more than 100 to 37, and plans to recommend more two-year contracts, rather than one-year contracts, to cut down on paperwork processing time.

The agency is unaware of any delays or failures to provide services as a result of the issues raised by its critics. Mental health dollars are not being improperly diverted to other Wayne County programs. According to Senate Health Policy Committee testimony, customer satisfaction surveys conducted by the agency demonstrate that service delivery has improved. Furthermore, there has been no evidence from the other CMHSPs that have converted to authorities that authority status leads to better service delivery. Converting to a CMH authority actually could dilute accountability, opening the door to irresponsible spending.

Blanket claims that the situation in Wayne County is jeopardizing reauthorization of the federal waiver and, therefore, Medicaid funding for the entire state, simply are unfounded. The waiver has been extended until September 30, 2005, and the Wayne County program is doing its part to ensure that the waiver will be reauthorized in the future.

POSITIONS:

There are no positions at present.

Legislative Analyst: Chris Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.