House
Legislative
Analysis
Section

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PSYCHIATRIC REFERRALS

House Bill 4033 as introduced
Sponsor: Rep. David M. Gubow
Second Analysis (2-15-94)

House Bill 4328 (Substitute H-1)
Sponsor: Rep. H. Lynn Jondahl
First Analysis (2-15-94)

Committee: Mental Health

THE APPARENT PROBLEM:

In September, 1991, the Houston Chronicle ran a series of articles on the growth of corporate psychiatric hospital chains and the kinds of abuses that can result when hospitalization is based not on medical need but on the availability of lucrative insurance reimbursement. As one of the articles pointed out, in the 1980s, private psychiatric hospitals owned by large corporations appeared on the scene and promised to be a high-growth, high-profit industry. But even as these investor-owned hospital chains began to appear, health care industry observers also warned of the potential for abuse. For example, the New England Journal of Medicine warned in 1980 that corporations in this "new medical industrial complex" would serve the interests of their shareholders first and those of society and their patients second. The Houston Chronicle series describes abuses in the psychiatric care system that seem to bear these early warnings out. The series reports the following instances of abuse:

* An international network of "patient brokers" who recruited and brought thousands of Canadian patients to fill U.S. corporate psychiatric hospital beds because until the fall of 1991, the Canadian health insurance covered 75 percent of expenses at non-Canadian substance abuse treatment facilities. (The average claim amount for substance abuse treatment for Canadians in U.S. psychiatric hospitals jumped nearly 900 percent from 1989 to 1991, with the average cost per patient jumping from $5,258 in 1989 to $18,800 in 1991, and the total claims rising from $5.4 million to $47 million.)

* Apprehension and delivery of patients by a private San Antonio security firm under contract with six psychiatric hospitals for fees of $150 to $450 per patient. In fact, in one case, a man reportedly was picked up by two employees of the security firm and held against his will at a San Antonio psychiatric hospital; apparently the security firm had obtained an emergency apprehension and detention warrant from a municipal court judge based on a diagnosis by a psychiatrist whom the man had never seen or heard of until after he was admitted to the hospital. The diagnosis apparently was made after the psychiatrist spoke with the man's estranged wife.

* Infiltration of Alcoholics Anonymous groups by employees of a Ft. Worth, Texas, referral firm in order to solicit and deliver prospective patients to contracted hospitals. The company, under contract with seven Texas hospitals, allegedly had a quota to deliver as many as 60 patients each month to a Ft. Worth hospital.

* Fraudulent claims used to bilk the Texas Crime Victims Compensation Fund by corporate psychiatric hospitals. (Claims reportedly tripled from $8 million to $25 million from 1985 to 1991.)

* Allegations that "public service" counselors, telephone "hot lines," and other "help groups" established by private hospitals covertly learn about people's insurance and then dupe them into inpatient treatment plans to obtain insurance reimbursement and regardless of the individual's medical needs.

* Claims by a Houston-area school counselor that she had been offered a $100 "reward" to refer troubled students to a hospital and by the former president of the Texas Society of Psychiatric Physicians that he was offered $1,500 if he would refer a patient to a private hospital.

* Allegations by former hospital admission officers who said they were judged, and sometimes fired, on the basis of their "conversion rate" -- that is, the number of hot line calls they could convert into patient admissions, regardless of medical need.

* So-called "golden handcuff" contracts between hospitals and psychiatrists, in which the hospital bankrolls the psychiatrist's practice, and the psychiatrist doesn't inform his or her patients. Such contracts can be extremely lucrative and may, for example, include "salaries" ranging from $150,000 to $300,000, allowance payments for "private" office rental, a secretary, and office and car telephones. Critics claim that such contracts limit independent medical judgment, erode the traditional doctor-patient relationship, and increase likelihood that patients will be referred to the contracted hospital for inpatient care based not on medical need but insurance coverage.

* Allegations that psychiatric hospitals, faced with a financial crunch, dissuade doctors from releasing patients until their insurance runs out.

Legislation has been introduced that would prevent such abuses from occurring in Michigan.

THE CONTENT OF THE BILLS:

The bills would amend the Mental Health Code (Public Act 258 of 1974) and the Public Health Code (Public Act 368 of 1978) to prohibit licensees (both facilities and individual practitioners) from taking kickbacks for psychiatric or mental health referrals.

House Bill 4033 would amend the Mental Health Code (MCL 330.1443b) to prohibit those licensed under the code -- mental or psychiatric hospitals and psychiatric units -- from paying someone in return for patient referrals. A first violation of this prohibition would result in an administrative fine of three times the amount of the kickback; subsequent violations, and failure to pay a fine imposed under the bill, would result in a one-month license suspension.

House Bill 4328. Currently, the Public Health Code prohibits certain unethical practices, including the taking of kickbacks for referring patients for medical or surgical services, appliances, or medications. A health care professional who violates this prohibition can be reprimanded, fined, put on probation, required to do community service or provide restitution, or have his or her license application denied.

The bill would amend the health code (MCL 333.16221 and 333.16226) to prohibit individual health care providers licensed or registered under the health code from taking kickbacks for psychiatric or mental health referrals. More specifically, the bill would add the taking of payment or kickbacks for psychiatric or mental health referrals to the list of unethical practices which trigger investigations by a disciplinary subcommittee. The bill also would add the suspension or revocation of the violator's license or registration to the existing list of sanctions for violation of this part of the health code.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Around the country, while the number of general hospital beds is declining, the number of private psychiatric beds has been surging. For example, while the number of Texas hospitals fell from 566 to 528 since 1984, the number of Texas private psychiatric hospitals jumped from 34 (with 3,462 licensed beds) to 86 (with 8,421 licensed beds). In a similar national trend, U.S. hospitals decreased from 6,872 to 6,720, while private psychiatric hospitals surged from 220 to more than 450. The skyrocketing growth was triggered in Texas and other states by the repeal of "certificate of need" restrictions and new requirements for insurance coverage for chemical dependency and mental illness. In Texas, for example, there was nearly a tripling of private psychiatric hospitals and a 50 percent increase in psychiatrists after the state Health Facilities Commission went out of existence and the state's certificate of need laws were repealed in 1984. (Texas reportedly is one of 14 states that has repealed its CON laws, allowing hospitals to build or expand without having to gain government approval.) Observers of the psychiatric care system also say that insurance companies also stimulated the growth of private psychiatric hospitals by offering more generous benefits for inpatient care than outpatient care -- with the perverse result that people wind up in the hospital because they can't afford outpatient care. Formidable marketing

campaigns were launched with hotlines and slick billboard, television, magazine, newspaper and radio advertisements promoting the benefits of inpatient treatment for depression or alcohol and drug abuse.

As a result of what one observer terms "the free market war" among private corporate psychiatric hospital chains, patients come to be seen as a means to fill empty beds -- at least until their insurance runs out. As the director of the Center for Public Policy and Contemporary Issues at the University of Denver said, "Psychiatric hospitals are the new cash cow." Not only are patients being subjected to medically unnecessary treatment -- and, in some cases, their civil rights being threatened -- but skyrocketing health costs are being further fueled. The cost of mental health and substance abuse claims, for example, has grown faster than any other health care cost. In Texas, psychiatric and chemical dependency claims nearly tripled over the past five years, according to Blue Cross and Blue Shield of Texas, and nationwide, mental health and substance abuse claims increased 50 percent from 1988 to 1991 according to a benefits consulting firm. The national study found employers spent an average of $244 per employee for mental health and substance abuse benefits in 1989, compared with $163 in 1987.

State and federal authorities reportedly have begun investigations of the corporate psychiatric industry in an attempt to curb abuses, and Texas adopted (in 1991) a law that makes it illegal to receive "headhunter's" bounty or fees to deliver patients to hospitals -- making it one of two states (the other is Virginia) to have done so. Michigan should join these forward-looking states to prevent such abuses, both of individual patients and of the insurance system, from happening here.

Against:

Currently, under the Public Health Code, a health care professional can be investigated for "dividing fees for referral of patients or accepting kick-backs on medical or surgical services, appliances, or medication purchased by or on behalf of patients." A representative of a professional psychologists' association raised concerns that the bill might prohibit participation in the association's referral pool (members pay a nominal annual fee to have their names included in the pool; they do not pay on a per-patient-referred basis) or might result in sanctions against professionals (such as a psychologist and physician) who make referrals to one another and express their appreciation by taking each other out to lunch. Since "kickback" is not defined in the health code, such normal practices -- which are far different from the "bounty hunting" that inspired the bill's introduction -- would appear to constitute a "gray" area with regard to the bill's sanctioning provisions. Perhaps by defining a monetary limit (for example, $150 a year for each professional relationship) the bill's extent could be more precisely defined.

POSITIONS:

Michigan Protection and Advocacy Service supports the bills. (2-25-94)

The Michigan Psychological Association supports House Bill 4328, but would like to see "kickback" defined. (2-11-94)

The Michigan Association for Emotionally Disturbed Children has not yet taken a position on the bills, but the association's mental health committee will recommend that the board adopt a position in support of the concept of the bills. (2-15-94)

The Michigan Psychiatric Society supports the bills. (2-15-94)