House
Legislative
Analysis
Section

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INVOLUNTARY MH INPATIENTS: WISCONSIN RECIPROCITY

House Bill 4001 (Substitute H-1)
First Analysis (3-1-95)

Sponsor: Rep. David Anthony
Committee: Mental Health

THE APPARENT PROBLEM:

Menominee, Michigan, and Marinette, Wisconsin, are "sister" cities that share a common border in the Upper Peninsula. In 1985, these two cities consolidated their health care system into a single entity, the Bay Area Medical Center. The cities' emergency medical and acute care services are located in Marinette and their non-acute care health program in Menominee, less than half a mile from the Marinette, Wisconsin, border. Until the new 16-bed psychiatric unit at the Bay Area Medical Center-Menominee was opened in September, 1991, adults needing inpatient psychiatric treatment had to go all the way to Marquette General Hospital, a two and one-half hour drive from Menominee. People served by the Delta Community Mental Health Board across the river from Menominee in Wisconsin also would like to have access to the new psychiatric unit. However, because Wisconsin law requires a reciprocity law that Michigan does not currently have regarding continuing legal jurisdiction of involuntarily committed mental health patients, Marinette residents needing involuntary inpatient psychiatric care must be taken to the nearest Wisconsin state facility, which is 60 miles from Marinette. Legislation has been introduced that would put this reciprocal legislation into Michigan law so that Marinette residents could use the Menominee psychiatric inpatient facilities.

THE CONTENT OF THE BILL:

The bill would add a new section to the Mental Health Code that basically would allow Wisconsin to place certain of its residents in Michigan psychiatric facilities by giving Wisconsin laws jurisdiction over Wisconsin residents who were involuntarily committed in Michigan for psychiatric treatment.

Provision of services. More specifically, Michigan community mental health (CMH) programs would be able to contract both (a) for services from agencies in bordering states to be provided to people needing mental health treatment who received services through the CMH program and (b) to provide services in approved treatment facilities for residents from bordering states who needed mental health services, unless the individual were involved in criminal proceedings.

Applicable laws. Except for laws and regulations in the "sending state" (that is, the state sending one of its residents into another state for treatment) regarding the length and extensions of involuntary inpatient treatment and reexaminations, people who were receiving mental health services in another state (the "receiving state") under a contract described in the bill would be subject to all of that state's laws and regulations regarding detention, commitment, or placement. Michigan residents couldn't be sent for mental health services in another state under a contract described in the bill unless the other state had a reciprocity law.

Involuntary commitment. Michigan residents and residents of bordering states who had been involuntarily detained, committed, or placed under civil law could be admitted and treated under contracts described in the bill. When people who had been involuntarily detained, committed, or placed under the law of the sending state were transferred to a receiving state, they would stay in the legal custody of the authority responsible for them under the law of the sending state. Except in emergencies, such people couldn't be moved or furloughed from the receiving agency without the specific approval of whomever was legally responsible for them in the sending state.

To the extent that a court order related to admission for the treatment or care of a mental disability, court orders valid in the law of the sending state would be granted recognition and reciprocity in the receiving state for individuals

covered by contracts described in the bill. Such court orders wouldn't be subject to legal challenge in the receiving state.

Contract approval. Contracts entered into under the bill's provisions couldn't be validly executed (a) until the Department of Mental Health reviewed and approved them (and decided that the agency in the other state provided services in accordance with Michigan standards) and (b) until the attorney general certified that the other state's patients' rights laws were substantially similar to Michigan law.

Required contract provisions. Each contract executed under the bill's provisions would have to do all of the following:

(1) Establish who would pay for each service provided under the contract (though charges to the sending state couldn't be more or less than the actual costs of providing the services).

(2) Establish who was responsible for transporting people to and from the public or private agency or community mental health program that provided the mental health treatment services.

(3) Require the "receiving agency" to report to the "sending agency" on the condition of each individual covered by the contract.

(4) Require arbitration of disputes (and specify how the arbitrators would be picked) between the contracting parties that couldn't be settled through discussion.

(5) Include legally required nondiscriminatory treatment provisions for employees and for individuals receiving mental health services (and applicants for employment or such services).

(6) Establish who would be responsible for providing legal representation, both for clients questioning the legality of their admission and the conditions of their involuntary inpatient treatment and for employees of the contracting agencies who were sued by clients.

(7) Include provisions concerning the length of the contract and how it could be terminated.

(8) Allow employees or representatives of the sending agency and sending state to inspect ("at all reasonable times") the records of the receiving agency (and its treatment facilities) in order to decide whether "appropriate standards of care" were met for people who received mental health services under the contract.

(9) Require the sending agency to give the receiving agency copies of all relevant legal documents that authorized the involuntary inpatient treatment of people who were hospitalized under the laws of the sending state and who were receiving mental health services under a contract under the bill.

(10) Require people who voluntarily sought mental health treatment to agree in writing to return to the sending state when they asked to be discharged under the bill's provisions, as well as require that someone from the sending agency certify that the client understood that agreement.

(11) Establish who would be responsible for having clients reexamined and for having involuntary inpatient treatment extended.

(12) Include provisions that specified when a receiving facility could refuse to admit or keep someone requiring mental health treatment.

(13) Specify the circumstances under which clients would be allowed home visits or granted passes to leave their treatment facility.

Unauthorized leave from involuntary treatment. If someone who was receiving mental health services under a contract described in the bill left involuntary treatment from a receiving agency without authorization, the receiving agency would be required to use "all reasonable means" to locate and return the individual and immediately report his or her unauthorized leave of absence to the sending agency. The receiving state would have primary responsibility for, and the authority to direct, the return of individuals within its borders, and it would be liable for the costs of such actions to the same extent it would be liable for the costs of returning its own residents who left treatment without authorization.

Voluntary placements. If someone were receiving mental health treatment voluntarily under a contract described in the bill and asked to be discharged, the receiving agency would have to immediately notify the sending agency and would have 48 hours from

the time of the patient's request (excluding weekends and legal holidays) to return him or her to the sending agency. When such individuals were returned to their sending agency, the agency would have to either immediately discharge them or else detain them under that state's emergency detention laws.

Residency not established. Treatment of Michigan residents in other states or of residents of other states in Michigan under the bill's provisions wouldn't establish legal residency in the state where the receiving agency was located.

Transfers between facilities. People needing mental health services could be transferred between facilities of a receiving state if transfers were allowed by the contract providing for their care.

Treatment records. The Mental Health Code's provisions regarding the confidentiality of treatment records would apply to the treatment records of someone receiving mental health services under a contract described in the bill, except that the sending agency would have access to confidential information when the information was necessary in order for the sending agency to discharge a legal responsibility.

MCL 330.1919

BACKGROUND INFORMATION:

The substitute adopted by the House Committee on Mental Health changed the number of the section that the bill would add to the Mental Health Code (from 921 to 919), without changing any of the language of the bill as originally introduced.

A similar bill, House Bill 4312, was passed by both the House of Representatives and by the Senate last session but was vetoed by the governor. (The legislation had originally been introduced as House Bill 5142 in 1991 but died in the Senate committee.) In his message to the House of Representatives, the governor said that, while he supported the policy set forth in the bill, it was "poorly drafted and full of technical inconsistencies" and "a crude copy of model legislation with little effort given to create a Michigan-specific act." The governor's message went on to say that the bill's "technical inconsistencies render [it] difficult to interpret and could result in needless litigation, wasting both time and taxpayer money." More specifically, the governor's message mentions two examples: First, subsection (2) of House Bill 4312 authorized a county program in Michigan to contract with a public or private agency "in a state bordering the Upper Peninsula of Michigan" in order to secure services, but then in subsection (7) authorized involuntarily detained individuals to be admitted and treated "in another state." Second, the bill used the terms "person," "individual," and "client" interchangeably and without definition. The governor's message says that since he does support the policy set forth, he encouraged the legislature "to promptly begin deliberations on a new, properly drafted bill."

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill has no fiscal implications for the state. (2-28-95)

ARGUMENTS:

For:

Wisconsin has legislation which allows its residents to be involuntarily committed in another state for mental health treatment. However, before Wisconsin residents can be involuntarily committed in other states, the Wisconsin law requires that the other states have reciprocal legislation which allows it to maintain legal jurisdiction over its citizens when they are involuntarily committed in another state.

In 1974, Michigan did adopt an "Interstate Compact on Mental Health" as part of the Mental Health Code. This part of the code allows residents of states in the compact who need to be institutionalized because of "mental illness or mental deficiency" to be treated, if such treatment is necessary, in a compact member state. However, apparently this part of the law does not adequately meet the reciprocal requirements of the Wisconsin law, so the bill is needed in order to allow residents of Marinette, Wisconsin, to be treated as involuntary inpatients in the Menominee, Michigan, inpatient psychiatric facility.

For:

The bill would benefit not only the specific communities involved, but also the approximately 75 patients (and their families) who would be affected each year.

The businesses and industries in Marinette and Menominee for a long time encouraged the consolidation of the two hospitals in the two cities so that there could be better and more cost efficient area-wide local medical services. While benefitting Wisconsin residents, the bill also would be good for Menominee County and Michigan, for it is very rare that a rural community like Menominee has access to a local community inpatient psychiatric resource. Having access to this resource greatly improves the quality of mental health care available to Menominee County residents, who, prior to the opening of the psychiatric unit in Menominee, had to go all of the way to Marquette for inpatient psychiatric services. What is more, the local community health boards believe that by being able to work cooperatively they will be able to fund innovative treatment programs that neither of the two systems could support alone.

In terms of improved patient care, families, both from Menominee and from Marinette, can be more involved in the inpatient and follow-up treatment of their loved ones, which research has shown substantially increases the patient's chance of success once discharged from the facility. Having to travel long distances to inpatient facilities makes follow up care involving family and friends costly and difficult, something that the bill would help ameliorate. The bill also would allow the correction of a situation that currently imposes considerable hardships on patients needing immediate involuntary psychiatric care. Although Marinette is less than a mile from the inpatient psychiatric facility in Menominee, right now psychiatric patients on the Wisconsin side of the river must be transported -- often forcibly -- 60 miles for treatment at the nearest Wisconsin state facility. Subjecting patients, who often are very despondent and agitated, to a two-hour drive in the back of a police car when help is available within a few minutes' drive can lead them to feel demeaned and even to sometimes believe that they have committed a criminal act, when in fact they are simply being taken for treatment.

The bill also would benefit the local communities economically by keeping mental health care dollars in the community, by supporting an expanded mental health care provider payroll, and by attracting and keeping local businesses and industries through improved quality of living. The hospital's ability to serve additional clients from Wisconsin would only enhance the hospital program, making it more likely that it will succeed and prosper economically, while payment for patients, whether from Menominee or Marinette, that formerly would have been referred outside of the community for treatment also would remain in the community. Marinette County reportedly transports an average of 75 patients per year to its state facility; having these patients admitted to the Menominee facility would add over $200,000 to that facility's budget. In addition, the Menominee Behavioral Medicine program has provided jobs for 35 people with an annual payroll of over $900,000, and the recruitment of additional staff for the program could bring an additional $250,000 to the local economy. Finally, by improving the quality of care locally, the program enhances the desirability of the community for businesses and industries, who can refer their employees for cost-effective local health care when needed.

Finally, the bill would benefit the court system in Menominee by allowing an involuntary commitment patient from Wisconsin to continue under the jurisdiction of the Wisconsin court while receiving treatment in a Michigan facility and without any added burden to the Menominee County Probate Court's docket. Some relief may even be experienced by the Menominee County Probate Court, since current practice requires a Wisconsin resident, present in Michigan, to be involuntarily committed by a Michigan court even if a Wisconsin court previously had jurisdiction over him or her. By recognizing the authority of Wisconsin courts over Wisconsin residents on matters of confinement for treatment or care of a mental disability, the Michigan courts wouldn't need to become involved in the matter.

Against:

Some people are concerned that since the Menominee Behavioral Medicine Unit has only 16 beds, it might be possible that when a Michigan resident needs such a bed none will be available because they'll all be occupied by Wisconsin residents.

Response:

Any overcrowding problems would be handled in the same way as they currently are -- additional patients would be sent to Marquette if there were no local beds available. But allowing Wisconsin residents makes it more likely that such a facility can be self-sustaining, and therefore a continuing resource for local people who otherwise always would have to go to Marquette for inpatient

psychiatric treatment. In any case, the Department of Mental Health reports that there would be between 6 and 8 Wisconsin patients a month at the Menominee facility, with a yearly total of about 75 patients. There should be plenty of beds for Menominee residents when needed.

POSITIONS:

The Department of Mental Health supports the bill. (2-28-95)

The Michigan Association of Community Mental Health Boards supports the bills. (3-1-95)

Northpoint Behavioral Health Care Systems (a merger of the former Menominee Community Mental Health Board and the Dickinson-Iron Community Mental Health Board) supports the bills. (2-28-95)

The Menominee Area Chamber of Commerce supports the bill. (2-28-95)

The Menominee-Marinette Area Mental Health Association supports the bill. (3-1-95)