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BILL ANALYSIS

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House Bill 4001 (Substitute H-1 as reported without amendment)
Sponsor: Representative David Anthony
House Committee: Mental Health
Senate Committee: Families, Mental Health, and Human Services

Date Completed: 3-21-95

RATIONALE

In response to community needs, the bordering cities of Menominee, Michigan and Marinette, Wisconsin consolidated their health care delivery systems several years ago. The cities' emergency medical and acute care services apparently are located in Marinette, while their nonacute care program is in Menominee. The new Bay Area Medical Center in Menominee contains a 16-bed Center for Behavioral Medicine, which serves psychiatric patients from Michigan as well as voluntarily committed patients from Wisconsin. Involuntarily committed psychiatric patients from Marinette, however, still must be transported to a Wisconsin state facility in Green Bay, which is about 60 miles away. Although Wisconsin residents would like to have access to the in-patient psychiatric unit in Menominee, Michigan apparently cannot recognize court-ordered commitments from another state without a reciprocity law providing for continuing jurisdiction over involuntarily committed patients.

CONTENT

The bill would amend the Mental Health Code to allow for contracts for reciprocity in the delivery of services between county community mental health (CMH) programs in Michigan and public or private agencies in a state bordering Michigan, except that a service could not be provided by a Michigan CMH program for a resident of another state who was involved in criminal proceedings or who was a convicted felon. The bill would do all of the following:

-- Authorize contracts between a CMH program and a public or private agency of another state and specify certain requirements for those contracts.

-- Make special provisions regarding the out-of-state treatment of a person who was detained, committed, or placed on an involuntary basis.

-- Provide for the legal jurisdiction over persons treated pursuant to a contract executed under the bill.

-- Provide for the discharge of a person receiving treatment on a voluntary basis pursuant to a contract executed under the bill.

Contracts

A Michigan CMH program could contract with a public or private agency in a bordering state to secure services under the Mental Health Code for a person who received services through the CMH program. A CMH program also could contract with a bordering state's public or private agency to provide services under the Code for a resident of that state, unless he or she were involved in criminal proceedings or were a convicted felon. A contract could not be validly executed until the Department of Mental Health (DMH) reviewed and approved the contract's provisions and determined that the receiving agency provided services in accordance with Michigan standards and the Attorney General certified that the bordering state's laws governing patient rights were substantially similar to Michigan's. ("Receiving agency" would refer to an agency or program that provided treatment to individuals from a state other than the state in which the agency or program was located.)

A person could not establish legal residence in the state in which the receiving agency was located while he or she received services pursuant to a contract executed under the bill. An individual could be transferred between facilities of the

receiving state if transfers were permitted by the contract providing for the individual's care.

The provisions of the Mental Health Code governing confidentiality of the records of a person's mental health treatment would apply to treatment records of a person who received services pursuant to a contract through a receiving agency in Michigan, except that the bordering state's sending agency would have the same right of access to the treatment records as does the DMH under the Code.

Every contract executed under the bill would have to do all of the following:

-- Establish the responsibility for payment for all services to be provided under the contract. Charges to the sending state could not be more or less than the actual costs of providing those services.
-- Establish the responsibility for the transportation of clients to and from receiving agencies.
-- Provide for reports by the receiving agency to the sending agency on the condition of each individual covered by the contract.
-- Provide for arbitration of disputes arising out of the provisions of the contract that could not be settled through discussion between the contracting parties and specify how the arbitrators would be chosen.
-- Include provisions that ensured the nondiscriminatory treatment, as required by law, of employees, individuals receiving treatment, and applicants for employment and services.
-- Establish the responsibility for providing legal representation for individuals receiving treatment in legal proceedings that involved the legality of admission and the conditions of involuntary inpatient treatment.
-- Establish the responsibility for providing legal representation for employees of the contracting parties in legal proceedings initiated by persons receiving treatment pursuant to the contract.
-- Include provisions concerning the length of the contract and the means by which it could be terminated.
-- Establish the right of one or more qualified employees or representatives of the sending agency and the sending state to inspect, at all reasonable times, the records of the receiving agency and its treatment facilities to determine if appropriate standards of care were met for individuals receiving services under the contract.
-- Require the sending agency to provide the receiving agency with copies of all relevant legal documents that authorized involuntary inpatient treatment of an individual who was admitted pursuant to laws of the sending state and received services pursuant to a contract executed under the bill.
-- Require each person who sought treatment on a voluntary basis to agree in writing to be returned to the sending state upon making a request for discharge and require an agent or employee of the sending agency to certify that the person understood that agreement.
-- Establish the responsibility for securing a reexamination for a person and for extending a person's period of involuntary inpatient treatment.
-- Include provisions specifying when a receiving facility could refuse to admit or retain an individual.
-- Specify the circumstances under which an individual would be permitted a home visit or be granted a pass to leave the facility, or both.

Involuntary Treatment

A person who was detained, committed, or placed on an involuntary basis under the Code could be admitted and treated in another state pursuant to a contract executed under the bill. A person who was detained, committed, or placed under the civil law of a bordering state could be admitted and treated in Michigan pursuant to a contract executed under the bill. Court orders that were valid under the sending state's laws would be granted recognition and reciprocity in the receiving state for persons covered by a contract to the extent that the court orders related to admission for treatment or care of a mental disability. The court orders would not be subject to legal challenge in the receiving state's courts.

A person who was detained, committed, or placed under the law of a sending state and was transferred to a receiving state would continue to be in the legal custody of the authority that was responsible for that person under the sending state's law. Except in an emergency situation, such a person could not be transferred, removed, or furloughed from a facility of the receiving state without the specific approval of the authority responsible for that person under the sending state's law.

If an individual who was receiving services pursuant to a contract executed under the bill left the receiving agency without authorization and he or she, at the time of the unauthorized leave, were subject to involuntary treatment under the sending state's laws, the receiving agency would have to use all reasonable means to locate and return the individual. The receiving state would have the primary responsibility for, and the authority to direct, the return of the individual within that state's borders and would be liable for the cost of those actions to the extent that it would be liable if a resident of the receiving state left without authorization.

Legal Jurisdiction

While in the receiving state pursuant to a contract executed under the bill, a person would be subject to all of the provisions of law and regulations applicable to persons detained, committed, or placed pursuant to the corresponding laws of that state, except those laws and regulations pertaining to length of involuntary inpatient treatment, reexaminations, and extensions of involuntary treatment. The laws and regulations of the sending state relating to length of involuntary inpatient treatment, reexaminations, and extensions of involuntary inpatient treatment would apply. A person could not be sent to another state under the bill until the receiving state enacted a law recognizing the validity and applicability of Michigan laws pertaining to length of involuntary inpatient treatment, reexaminations, and extensions of involuntary treatment.

Voluntary Treatment

If a person receiving treatment on a voluntary basis pursuant to a contract requested discharge, the receiving agency immediately would have to notify the sending agency. The receiving agency would have to return the person to the sending state as directed by the sending agency within 48 hours after the request, excluding Saturdays, Sundays, and legal holidays, unless other arrangements were made with the sending agency. Immediately upon return of the individual, the sending agency would have to arrange for the discharge of the person or detain him or her pursuant to the sending state's emergency detention laws.

Proposed MCL 330.1919

BACKGROUND

A similar bill, House Bill 4312, was passed by both the House and the Senate last session but was vetoed. The Governor's veto message objected to technical inconsistencies in that bill. For instance, the House bill applied only to a state bordering Michigan's Upper Peninsula (i.e., Wisconsin), but referred in other parts of the bill to individuals who would be detained and treated "in another state". Also, the Governor objected to the terms "person", "individual", and "client" being used interchangeably without definition. While vetoing the bill based on these technical deficiencies, the Governor expressed support for reciprocity of mental health services and urged the Legislature to begin deliberations on a new bill.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The problems of escalating health care cost and shortages of health care professionals in rural areas have caused a crisis in health care in rural communities across the nation for many years. It is rare for a city such as Menominee to have a local community inpatient psychiatric resource like the Bay Area Center for Behavioral Medicine. The bill would allow the bordering county community mental health agencies of Marinette and Menominee, which are less than one-half mile apart, to employ cost-effective methods to enable their programs to prosper economically, and to cooperate in providing a continuum of mental health care to residents of the area. The bill also would enable the Bay Area Medical Center to project the image of a comprehensive medical care center, and to function as a community resource for both locations. In addition, the bill would have a positive economic impact upon the community. Marinette County reportedly transports an average of 75 involuntary commitment patients per year to a Wisconsin state facility. Admitting these patients, instead, to the behavioral medical center in Menominee apparently would add over $200,000 to the center's budget. It also is estimated that serving the new patients would result in the hiring of additional staff, which could bring another $250,000 into the local economy. In addition, area health professionals believe that the bill would provide the basis for the community mental health agencies involved to work cooperatively to fund innovative treatment programs that neither of the two systems could support alone.

Supporting Argument

Mentally ill patients and their families who live within one mile of a medical center should not have to worry about being transported some 60 miles for treatment. Transporting those who need psychiatric intervention, sometimes against their will, may cast a criminal aura over the situation. The patient may, understandably, feel more like a prisoner than a patient who is about to receive help. Also, many contend that including a patient's family in the treatment process substantially increases the patient's success when he or she returns home. The inclusion of family would be much more likely if a patient received treatment close to home. In addition, when a patient is treated closer to where he or she lives, the agencies involved in the patient's treatment can be more involved in his or her aftercare.

Supporting Argument

The objections raised by the Governor in his veto message of House Bill 4312 have been addressed in House Bill 4001 (H-1). Instead of applying to a state bordering the Upper Peninsula, House Bill 4001 (H-1) would apply to states bordering Michigan. In addition, by using the term "individual receiving services" or "individual" throughout, the bill is more consistent and clearly understood. "Individual" is defined in the bill as "an individual requiring mental health treatment services".

Opposing Argument

The behavioral medicine unit in Menominee's Bay Area Medical Center has only 16 beds. If these beds were made available to mentally ill patients from Wisconsin, it is possible that Michigan patients could be turned away when the unit was full with patients from Wisconsin. Since the bill applies to all states bordering Michigan, it is also possible that patients from other states could flood Michigan's mental health system.

Response: The potential problem of crowding from Wisconsin patients would be handled in the same manner as other crowding problems in the Menominee facility: Michigan residents would be sent to the State's regional psychiatric hospital in Marquette. Since it is estimated that only about 75 Wisconsin patients per year would be involved, and the facility currently averages 12 patients, with an average length of stay of 17 days, no problems are anticipated, however. In addition, while the bill would apply to Ohio and Indiana as well as Wisconsin, reciprocity agreements would not apply unless those states adopted a similar statute. (Wisconsin already has enacted one.) Even then, the bill would allow, but would not require, Michigan CMH programs to enter into contracts with bordering states' public or private agencies. A further check lies in the bill's requirement that the DMH review a contract and that the Attorney General certify that the bordering state's laws governing patient rights were substantially similar to Michigan's.

Legislative Analyst: S. Margules

FISCAL IMPACT

The bill would have a State funding impact, depending on how much states bordering Michigan spent for similar mental health services and whether billings to the sending state were for actual costs or some other amount. Subsection 12(a), "Charges...shall not be more or less than actual cost...", could result in contractual issues regarding service reimbursement: a conflict of actual costs versus payments based on days of service or the number of cases.

Fiscal Analyst: S. Angelotti

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