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Senate Bills 554 through 557 (as reported without amendment)
Sponsor: Senator Shirley Johnson (Senate Bills 554 & 556)
Senator Bev Hammerstrom (Senate Bills 555 & 557)
Committee: Families, Mental Health and Human Services

Date Completed: 10-18-01

RATIONALE

Michigan has been under a Federal waiver as to how the State delivers Medicaid specialty services for the seriously mentally ill, the developmentally disabled, and those who suffer from addictive disorders. Last year, the Department of Community Health (DCH) submitted a plan requesting a further waiver from Federal Health Care Financing Administration (HCFA) requirements regarding the management and delivery of these services. The HCFA requirements include a competitive bid process to award contracts to prospective managing entities for the provision of Medicaid specialty services. The DCH plan, proposed in its waiver application and approved by HCFA last February, provides for an alternative to the strict competitive procurement process required by the HCFA.

In Michigan, Medicaid-covered mental health services, development disability services, and substance abuse services traditionally have been provided through community mental health service programs (CMHSPs), and the DCH plan continues that arrangement but with some refinement. The DCH plan gives first priority to existing CMHSPs, or groups of them acting in collaboration with each other. Although CMHSPs already have ways to affiliate, some people believe that statutory authority for CMHSPs to establish regional entities, revisions to conflict-of-interest provisions for community mental health (CMH) board members, and legal authority to pool resources and risks, would be helpful to CMHSPs that wish to collaborate in order to meet the requirements of the DCH plan.

CONTENT

Senate Bills 554, 555, 556, and 557 would amend the Mental Health Code to allow CMH organizations or authorities to

establish regional entities; allow CMH service programs to share risks and costs associated with providing mental health services; and revise conflict of interest provisions pertaining to CMH board members.

Senate Bill 554 would define "regional entity" as an entity established under Section 204b (proposed by Senate Bill 555) to provide specialty services and supports to Medicaid recipients.

Senate Bill 555 would do all of the following:

- **Allow a combination of adjoining CMH organizations or authorities to establish a regional entity.**
- **Require that a regional entity have bylaws, and specify what they would have to contain, including the manner in which a CMHSP would participate in governing the regional entity.**
- **Designate the powers of a regional entity, including the power to contract with participating CMHSPs for any service performed by or for them, and the power to contract with the State to serve as the Medicaid specialty service prepaid health plan for the service areas of participating CMHSPs.**
- **Grant a regional entity the privileges and immunity from liability and exemptions from laws and rules that the Code provides to CMHSPs.**
- **Require a regional entity to provide an annual report of its activities to each participating CMHSP.**

Senate Bill 556 would allow a CMH services program to share the risk and cost of providing mental health services

with other public or private entities through arrangements including insurance and reinsurance agreements, risk pooling agreements, or capitation and subcapitation agreements, without regard to frequency, extent, or type of mental health services.

Senate Bill 557 would make exceptions to conflict of interest restrictions that apply to individuals serving on a CMH board.

Senate Bill 554 is tie-barred to Senate Bill 555.

A more detailed description of Senate Bills 555 and 557 follows.

Senate Bill 555

Bylaws

A combination of adjoining CMH organizations or CMH authorities could establish a regional entity by adopting bylaws that met the requirements of the bill. The bylaws would have to state the purpose and power to be exercised by the regional entity to carry out the provisions of the Code, including the manner by which the purpose would be accomplished or the power would be exercised.

The bylaws also would have to state the manner in which a CMH service program would participate in governing the regional entity, including 1) whether a CMHSP that subsequently participated in the regional entity could participate in governing activities; 2) the circumstances under which a participating CMHSP could withdraw from the regional entity and the notice required for that withdrawal; and 3) the process for designating the regional entity's officers and the method of selecting them. The process would have to include appointing a fiscal officer who would have to receive, deposit, invest, and disburse the regional entity's funds in the manner authorized by its bylaws or governing body. A fiscal officer could hold another office or other employment with the regional entity or a participating CMHSP.

In addition, the bylaws would have to specify the manner in which the regional entity's assets and liabilities would be allocated to each participating CMHSP, including, at a minimum 1) the manner for equitably providing for, obtaining, and allocating

revenues derived from a Federal or State grant or loan, or a gift, bequest, grant, or loan from a private source; 2) the method or formula for equitably allocating and financing the regional entity's capital and operating costs, payments to reserve funds authorized by law, and payments of principal and interest on obligations; 3) the method for allocating any of the regional entity's other assets; and 4) the manner in which, after the completion of the regional entity's purpose as specified in its bylaws, any surplus funds would be returned to the participating CMH service programs.

The bylaws also would have to state all of the following:

- A process providing for strict accountability of all funds and the manner in which reports, including an annual independent audit of the regional entity's receipts and disbursements, would be prepared and presented.
- The manner in which the regional entity would enter into contracts, including a contract involving the acquisition, ownership, custody, operation, maintenance, lease, or sale of real or personal property, and the disposition, division, or distribution of property acquired through the execution of the contract.
- The manner for adjudicating a dispute or disagreement among participating CMH service programs.
- The effect of a participating CMHSP's failure to pay its designated share of the regional entity's costs and expenses, and the rights of the other participating CMHSPs as a result of that failure.
- The process and vote required to amend the bylaws.
- Any other necessary and proper matter agreed to by the participating CMHSPs.

The bylaws would have to be filed with the clerk of each county in which a participating CMHSP was located and with the Secretary of State, before the bylaws took effect.

Powers

Except as otherwise stated in its bylaws, a regional entity would have all of the following powers:

- The power, privilege, or authority that the participating CMHSPs shared in common and could exercise separately under the

Code, regardless of whether that power, privilege, or authority was specified in the regional entity's bylaws.

- The power to contract with the State to serve as the Medicaid specialty service prepaid health plan for the designated service areas of the participating CMHSPs.
- The power to accept funds, grants, gifts, or services from the Federal government or a Federal agency, the State or a State department, agency, instrumentality, or political subdivision, or any other governmental unit regardless of whether it participated in the regional entity, and from a private or civic source.
- The power to enter into a contract with a participating CMHSP for any service to be performed for, by, or from it.
- The power to create a risk pool and take other action as necessary to reduce the risk that a participating CMHSP otherwise would bear individually.

Privileges & Immunity

A regional entity created under the bill and its board members, officers, agents, and employees would retain all the privileges and immunity from liability and exemptions from laws, ordinances, and rules provided under the Code to county CMHSPs and their board members, officers, and administrators, and county elected officials and employees of county government.

Senate Bill 557

Under the Mental Health Code, an individual may not be appointed to or serve on a CMH services board if he or she is a party to a contract with the CMH services program or is administering or benefitting financially from a contract with the CMHSP. The bill would exclude from that restriction a party to a contract between a CMHSP and a regional entity.

A person also may not be appointed to or serve on a CMH services board if he or she is serving in a policy-making position with an agency under contract with the CMHSP. The bill would exclude from that restriction an individual serving in a policy-making position with a joint board or commission established under Public Act 8 of the Extra Session of 1967 or a regional entity to provide CMH services. (Public Act 8 authorizes two or more political subdivisions to enter into a contract with each other providing for the transfer of

functions or responsibilities to one another upon the consent of each political subdivision.)

The Code provides that, if a board member is an employee or independent contractor in other than a policy-making position with an agency with which the board is considering entering into a contract, the contract may not be approved unless the following requirements are met:

- The board member promptly discloses to the board his or her interest in the contract.
- The contract is approved by a vote of at least two-thirds of the board membership in an open meeting without the vote of the board member in question.
- The official minutes of the meeting at which the contract is approved contain the details of the contract, including the names of all parties, the terms of the contract, and the nature of the board member's interest in the contract.

Under the bill, that provision would not apply to a board member who was an employee or independent contractor in other than a policy-making position with a joint board or commission established under Public Act 8 of the Extra Session of 1967 or a regional entity to provide CMH services.

MCL 330.1100c (S.B. 554)

Proposed MCL 330.1204b (S.B. 555)

MCL 330.1226 (S.B. 556)

330.1222 (S.B. 557)

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

Federal requirements for the provision of Medicaid-covered services to mental health and substance abuse clients mandate that states use a bid procurement process to award prepaid health plan (PHP) contracts. Michigan has applied for, and received, a waiver from those requirements. Under the DCH waiver plan, qualified CMHSPs will receive initial consideration to operate as the specialty PHPs for their designated service areas. This initial consideration, however, will not be offered to all existing CMHSPs as individual, stand-alone organizations. In order to provide efficient

administration of Medicaid specialty services programs, the DCH plan, consistent with Federal standards, requires that each PHP serve an area with at least 20,000 Medicaid beneficiaries. According to the DCH plan: "The state has determined that an eligibility base of roughly 20,000 is the point at which scale economies for PHP administrative activities begin to develop."

The DCH plan allows multiple CMHSPs that collectively have at least 20,000 Medicaid beneficiaries to submit a consolidated application for PHP designation. The plan recognizes some legal structures under which a consolidated application may be pursued, including a so-called "hub and spoke" agreement in which one CMHSP acts as the PHP for the entire region and the other CMHSPs in the affiliation are eligible for a special provider status. The hub CMHSP may be designated through a formal agreement under the statute that deals with the intergovernmental transfer of functions and responsibilities (Public Act 8 of the Extra Session of 1967). Another option is for affiliated CMHSPs to submit a consolidated application for participation as a PHP along with a declaration, and supportive documentation, that the CMHSPs have created or are in the process of creating a new entity under the Urban Cooperation Act. According to testimony before the Senate Committee on Families, Mental Health and Human Services by the executive director of the Michigan Association of Community Mental Health Boards, CMHSPs in areas with fewer than 20,000 Medicaid recipients already have begun to enter into regional affiliation arrangements.

The bills would give CMHSPs another, more streamlined option to affiliate and apply for participation as a PHP. Creating and regulating regional entities under the Mental Health Code would encourage the kind of affiliated PHP designation envisioned in the DCH plan for CMH service areas with fewer than 20,000 Medicaid recipients. It also would allow affiliating CMHSPs to use a process specifically designed for their use in applying for designation as a mental health PHP, rather than the more cumbersome procedures already established in statute for intergovernmental transfers of functions or cooperation between separate local governmental entities. In addition, authorizing CMHSPs to share the risk of providing specialty services with other entities

would help to facilitate the regional entity affiliations. Addressing conflict-of-interest provisions would ensure that CMHSP board members and directors were not prohibited from serving on regional entity boards.

Response: The bills could be improved in several ways. The definition of regional entity proposed by Senate Bill 554 should not be limited to entities that provide service to the Medicaid population. As long as these regional CMHSP affiliations would serve that population, they should be allowed to provide services to others, as well. In addition, a CMHSP may be operated as a CMH authority, CMH organization, or county agency. Senate Bill 555, however, would apply only to CMH authorities and organizations; CMHSPs organized as county agencies should be given the same authority to join a regional entity. Also, Senate Bill 555 would require participants in regional entities to be adjoining CMHSPs, but a number of the affiliations that already have been developed involve CMHSPs that work well together but are not necessarily contiguous. Furthermore, perhaps the bills should make it clear in statute that CMHSP affiliations would not be limited to regional entities created under Senate Bill 555, and that existing methods of collaborating would remain available.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The creation of regional entities would not have a direct impact on State and local expenditures. One may assume that such entities would prove to be more efficient than the current system of 48 community mental health boards. If this proved true, savings would accrue to the entities and, if these savings exceeded the statutory 5% carryforward threshold, the State would realize savings.

Fiscal Analyst: S. Angelotti

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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.