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SFA



BILL ANALYSIS

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Senate Bill 554 (Substitute S-1 as passed by the Senate)
Senate Bill 555 (Substitute S-1 as passed by the Senate)
Senate Bill 556 (Substitute S-2 as passed by the Senate)
Senate Bill 557 (Substitute S-1 as passed by the Senate)
Senate Bill 1337 (as passed by the Senate)
Sponsor: Senator Shirley Johnson (Senate Bills 554 & 556)
Senator Bev Hammerstrom (Senate bills 555, 557, & 1337)
Committee: Families, Mental Health and Human Services

Date Completed: 7-31-02

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. In 2000, 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 in February 2001, provides for an alternative to the strict competitive procurement process required by the HCFA.

In Michigan, Medicaid-covered mental health services, developmental 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.

In addition, the Code allows a CMHSP to retain a portion of its unspent appropriations for use in the following fiscal year, rather than returning the funds to the State. Currently, that provision allows the carryforward for the fiscal years ending September 30, 2000, 2001, and 2002. It has been suggested that the authorization should be extended to future fiscal years.

CONTENT

Senate Bills 554 (S-1), 555 (S-1), 556 (S-2), 557 (S-1), and 1337 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; revise conflict of interest provisions pertaining to CMH board members; and require the DCH to establish standards for CMHSPs designated as specialty prepaid health plans (PHPs) under the Medicaid managed care program.

Senate Bill 554 (S-1) would define "regional entity" as an entity established under Section 204b (proposed by Senate Bill 555 (S-1)) to provide specialty services and supports.

Senate Bill 555 (S-1) would do all of the following:

-- Allow a combination of 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.
- Specify requirements pertaining to a regional entity's employment issues.

Senate Bill 556 (S-2) would allow a CMHSP to share the costs or risks, or both, of managing and providing publicly funded mental health services with other CMHSPs through participation in risk pooling arrangements, reinsurance agreements, and other joint or cooperative arrangements as permitted by law.

The bill also would extend to fiscal years 2002-03 and 2003-04 a provision that allows a CMHSP to carry forward the operating margin up to 5% of its State share of the operating budget. ("Operating margin" means the excess of State revenue over State expenditures for a single fiscal year exclusive of capitated payment under a managed care system.)

Senate Bill 557 (S-1) would make exceptions to conflict of interest restrictions that apply to individuals serving on a CMH board.

Senate Bill 1337 would require the DCH to establish standards for CMHSPs designated as specialty PHPs under the Medicaid managed care program.

Senate Bill 554 (S-1) is tie-barred to Senate Bill 555.

A more detailed description of Senate Bills 555 (S-1), 557 (S-1), and 1337 follows.

Senate Bill 555 (S-1)

Bylaws

A combination of 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.

Further, the bylaws would have to state the manner in which a participating CMHSP's special fund account would be allocated. (The Code allows a CMHSP to create a special fund account to receive recipient fees and third-party reimbursement for services rendered. Money in a special fund account may be used only for matching State funds or for the provision of CMH services.)

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.

Employment Issues

If a regional entity assumed the duties of a participating CMHSP, or contracted out those duties, the manner of employing, compensating, transferring, or discharging necessary personnel would be subject to the applicable civil service and merit systems; employees of a regional entity would be public employees; and regional entities and their employees would be subject to the public employment relations Act.

In addition, at the time a regional entity was established, the employees of the participating CMHSPs would be transferred to the regional entity and appointed as employees who would retain all their rights and benefits for one year. For one year, a regional entity employee could not, due to the transfer, be placed in a worse position with respect to workers' compensation,

pension, seniority, wages, sick leave, vacation, health and welfare insurance, or another benefit that the employee had as an employee of the participating CMHSP. A transferred employee's accrued benefits or credits could not be diminished by reason of the transfer.

If a participating CMHSP were the designated employer or participated in the development of a collective bargaining agreement, the regional entity would have to assume and would be bound by the existing collective bargaining agreement. Establishing a regional entity could not adversely affect existing rights or obligations contained in the existing collective bargaining agreement. (Participation in the development of a collective bargaining agreement would mean that a representative of the participating CMHSP actively participated in bargaining sessions with the employer representative and union or was consulted during the bargaining process.)

Senate Bill 557 (S-1)

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 CMHSP 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