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SFA



BILL ANALYSIS

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Senate Bill 554 (as enrolled)
Senate Bills 555, 556, and 557 (as enrolled)
Senate Bill 1337 (as enrolled)
Sponsor: Senator Shirley Johnson (Senate Bills 554 & 556)
 Senator Bev Hammerstrom (Senate Bills 555, 557, & 1337)
Senate Committee: Families, Mental Health and Human Services
House Committee: Health Policy

PUBLIC ACT 589 of 2002
PUBLIC ACTS 594-596 of 2002
PUBLIC ACT 597 of 2002

Date Completed: 1-30-03

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, which the HCFA approved 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 had other ways to affiliate, some people believed 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. That provision had allowed the carryforward for the fiscal years ending September 30, 2000, 2001, and 2002. It was suggested that the authorization be extended to future fiscal years.

CONTENT

The bills amended 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 defines "regional entity" as an entity established under Section 204b (added by Senate Bill 555) to provide specialty services and supports.

Senate Bill 555 does all of the following:

- Allows a combination of CMH organizations, authorities, or agencies to establish a regional entity.**
- Requires that a regional entity have bylaws, and specifies what they must contain, including the manner in which a CMHSP participates in governing the regional entity.**

- **Designates 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 PHP for the service areas of participating CMHSPs.**
- **Grants a regional entity the privileges and immunity from liability and exemptions from laws and rules that the Code provides to CMHSPs.**
- **Requires a regional entity to provide an annual report of its activities to each participating CMHSP.**
- **Specifies requirements pertaining to a regional entity's employment issues.**

Senate Bill 556 allows 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 extended 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 made exceptions to conflict of interest restrictions that apply to individuals serving on a CMH board.

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

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

A more detailed description of Senate Bills 555, 557, and 1337 follows.

Senate Bill 555

Bylaws

The bill allows a combination of CMH organizations or CMH authorities to establish a regional entity by adopting bylaws that meet

the requirements of the bill. A CMH agency may combine with a CMH organization or authority to establish a regional entity if the board of commissioners of the county or counties represented by the CMH agency adopts bylaws that satisfy the bill. The bylaws must 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 will be accomplished or the power will be exercised.

The bylaws also must state the manner in which a CMH service program will participate in governing the regional entity, including 1) whether a CMHSP that subsequently participates in the regional entity may participate in governing activities; 2) the circumstances under which a participating CMHSP may 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 must include appointing a fiscal officer who will receive, deposit, invest, and disburse the regional entity's funds in the manner authorized by its bylaws or governing body. A fiscal officer may hold another office or other employment with the regional entity or a participating CMHSP.

In addition, the bylaws must specify the manner in which the regional entity's assets and liabilities will 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 will be returned to the participating CMH service programs.

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

The bylaws also must 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, will be prepared and presented.
- The manner in which the regional entity will 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 CMHSPs.
- 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 must be filed with the clerk of each county in which a participating CMHSP is located and with the Secretary of State, before the bylaws take effect.

Powers

Except as otherwise stated in its bylaws, a regional entity has 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 is specified in the regional entity's bylaws.
- The power to contract with the State to serve as the Medicaid specialty service PHP 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 participates 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.

A regional entity established under the bill is a public governmental entity separate from the county, authority, or organization that establishes the regional entity.

Privileges & Immunity

A regional entity created under the bill and its board members, officers, agents, and employees 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 assumes the duties of a participating CMHSP, or contracts out those duties, the manner of employing, compensating, transferring, or discharging necessary personnel is subject to the applicable civil service and merit systems; employees of the regional entity are public employees; and the regional entity and its employees are subject to the public employment relations Act.

In addition, at the time a regional entity is established, the employees of the participating CMHSPs who are transferred to the regional entity and appointed as employees retain all their rights and benefits for one year. If a participating CMHSP ceases to operate at the time a regional entity is established, the CMHSP employees must be transferred to the regional entity and appointed as employees who will retain all their rights and benefits for one year. Also, for one year, a regional entity employee may 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 may not be diminished by reason of the transfer.

If a participating CMHSP is the designated employer or participates in the development of a collective bargaining agreement, the regional entity assumes and is bound by the

existing collective bargaining agreement. Establishing a regional entity does not adversely affect existing rights or obligations contained in the existing collective bargaining agreement. (Participation in the development of a collective bargaining agreement means 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

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 excludes from that restriction a party to a contract between a CMHSP and a regional entity or a separate legal or administrative entity created by two or more CMHSPs under the Urban Cooperation Act or Public Act 8 of the Extra Session of 1967. (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 also provides that a person 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 excludes 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.

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 does not apply to a board member who is 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, a separate legal or administrative entity established under the Urban Cooperation Act, a combination of municipal corporations joined under Public Act 35 of 1951 (which authorizes intergovernmental contracts between municipal corporations), or a regional entity, to provide CMH services.

Senate Bill 1337

The bill requires the DCH to establish standards for CMHSPs designated as specialty PHPs under the Medicaid managed care program. The standards must refer to applicable Federal regulations related to Medicaid managed care programs and specify additional State requirements for specialty PHPs. The standards must be published in a departmental bulletin or by an updating insert to a departmental manual.

As a condition for contracting and for receiving payment under the Medicaid managed care program, a CMHSP designated as a specialty PHP must certify that the program is in substantial compliance with the standards promulgated by the DCH and with applicable Federal regulations, and that it has established policies and procedures to monitor compliance and to ensure program integrity. The DCH must conduct an annual review of all CMHSPs designated as specialty PHPs to verify the declarations made by the CMHSPs and to monitor compliance with the standards and Federal regulations. The annual review process must be published in a departmental bulletin or by an updating insert to a departmental manual.

The bill permits the DCH to conduct separate reviews of a specialty PHP in response to beneficiary complaints, financial status considerations, or health and safety concerns.

The bill requires contracts with specialty PHPs to indicate the sanctions that the DCH may invoke if it determines that a specialty PHP is not in substantial compliance with the promulgated standards and established Federal regulations, that the specialty PHP has

misrepresented or falsified information reported to the State or the Federal government, or that the specialty PHP has failed substantially to provide necessary covered services to recipients under the terms of the contract. Sanctions may include intermediate actions, including a monetary penalty imposed on the administrative and management operation of the specialty PHP, imposition of temporary State management of a CMHSP operating as a specialty PHP, or termination of the DCH's Medicaid managed care contract with the CMHSP. Before imposing a sanction, the DCH must give the CMHSP timely written notice that explains both the basis and nature of the sanction and the opportunity for a hearing to contest or dispute the Department's findings and intended sanction. A hearing is subject to the provisions governing a contested case under the Administrative Procedures Act unless otherwise agreed to in the specialty PHP contract.

MCL 330.1100c (S.B. 554)
330.1204b (S.B. 555)
330.1226 (S.B. 556)
330.1222 (S.B. 557)
330.1232b (S.B. 1337)

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 PHP contracts. Michigan applied for, and received, a waiver from those requirements. Under the DCH waiver plan, qualified CMHSPs have received initial consideration to operate as the specialty PHPs for their designated service areas. This initial consideration, however, was not 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 have entered into regional affiliation arrangements.

The bills 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 will encourage the kind of affiliated PHP designation envisioned in the DCH plan for CMH service areas with fewer than 20,000 Medicaid recipients. Also, affiliating CMHSPs may 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 costs and risks of providing specialty services with other entities will help to facilitate the regional entity affiliations; addressing conflict-of-interest provisions will ensure that CMHSP board members and directors are not prohibited from serving on regional entity boards; and addressing employment issues will ease the transition for the employees of a regional entity assuming the administrative duties of a CMHSP.

Supporting Argument

Community mental health services programs should be encouraged to be innovative and efficient in the delivery of mental health services. Being allowed to retain a portion of their unspent budgeted funds can help to accomplish that purpose. Extending the Mental Health Code's authorization for CMHSPs to carry forward those funds, as Senate Bill 556 did, is in the best interests of Michigan's citizens.

Response: If keeping excess funds encourages innovation and efficiency, perhaps the carryforward provision should be made permanent, rather than merely extended for two years.

Opposing Argument

The CMH carryforward authorization should be eliminated. It is inappropriate to allow a governmental entity to keep taxpayer-supplied funds that the entity does not need, particularly at a time when the State budget is so tight. If the CMHSPs do not have a use for all of the money budgeted to them in a given fiscal year, those excess funds should lapse to the State. Continuing to allow the CMHSPs to keep a portion of their unspent budgeted funds just encourages those entities to request from the State more money than needed to provide mental health services for the fiscal year.

Response: The carryforward authorization encourages innovation in the delivery of mental health services by CMHSPs. In addition, CMHSPs are funded differently than most State programs. Mental health services are provided by the local CMHSPs under a contract with the State. It is inappropriate for the State to ask for the return of contractual payments.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bills 554, 555, 556, & 557

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

Senate Bill 1337

The bill will have an indeterminate fiscal impact. Any sanctions, if enforced, will result in a revenue gain to the State, offset by an equivalent loss by a local community mental health board. The shift to treating such boards as prepaid health plans will have no fiscal impact, as these boards are already paid on a capitation basis, and the bill does not change that.

Fiscal Analyst: Steve 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.