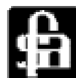

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bills 683 through 686 (as enrolled) **PUBLIC ACTS 496-499 of 2004**
Senate Bill 1464 (as enrolled) **PUBLIC ACT 532 of 2004**
Senate Bill 1465 (as enrolled) **PUBLIC ACT 551 of 2004**
Senate Bill 1466 (as enrolled) **PUBLIC ACT 559 of 2004**
Senate Bills 1467 through 1472 (as enrolled) **PUBLIC ACTS 552-557 of 2004**
Sponsor: Senator Tom George (S.B. 683)
Senator Bruce Patterson (S.B.684, 1470, 1471, & 1472)
Senator Virg Bernero (S.B. 685)
Senator Gilda Z. Jacobs (S.B. 686, 1465, 1466, & 1467)
Senator Bev Hammerstrom (S.B. 1464, 1468, & 1469)
Senate Committee: Health Policy
House Committee: Health Policy

Date Completed: 1-13-05

RATIONALE

A heightened understanding of the nature of mental illness, advances in treatment, and a focus on patients' rights have contributed to a shift in attitudes toward, and treatment of, the mentally ill. Many people now believe that outpatient, community-based treatment is more therapeutic than long-term, inpatient hospitalization. In addition, psychiatric medications have helped facilitate the large-scale deinstitutionalization of mental health patients over the last few decades. Some people believe, however, that the current outpatient options for treatment are inadequate to meet the needs of a certain segment of the mentally ill population--those who are so severely and persistently mentally ill that they do not understand their need for treatment. Such patients might not require inpatient hospitalization, but could benefit from intensive outpatient services.

The original criteria for ordering a mentally ill person into inpatient or outpatient treatment were based on whether the individual posed a serious physical threat to himself or herself or to another person, or whether the individual could not take care of himself or herself. Some people believed that these criteria were too narrow. A mentally ill person who is noncompliant with his or her recommended treatment can deteriorate, lose the ability to make rational decisions, and become dangerous in the future. Because such a person does not present an imminent threat, however, he or she could not be ordered into treatment. It was suggested that a court should be able to order a person into treatment if he or she demonstrates noncompliance with a treatment plan, such as by failing to keep scheduled appointments with counselors or refusing to take prescribed psychiatric medications, and the person's noncompliance has resulted in his or her hospitalization, incarceration, or violent behavior in the recent past. It also was suggested that assisted outpatient treatment (AOT) could benefit some patients who, due to mental illness, refuse to seek treatment on their own.

In a related matter, provisions of the Estates and Protected Individuals Code allow an individual to designate a patient advocate to make medical decisions on his or her behalf if he or she is incapacitated by illness or injury. It was suggested that an individual also should be able to designate a patient advocate to make mental health treatment decisions, and document his or her wishes regarding mental health treatment to ensure that they are carried out.

CONTENT

Senate Bills 683 through 686 amended the Mental Health Code to do the following:

- **Extend the definition of "person requiring treatment" to someone not complying with recommended treatment, under certain circumstances; and provide that the person is eligible for "assisted outpatient treatment" (AOT).**
- **Allow an individual to file a petition with the court asserting that a person meets the criteria for AOT.**
- **Require the court to order the subject of a petition to receive AOT through a community mental health services program (CMHSP), if he or she meets the criteria and is not scheduled to begin outpatient treatment.**
- **Require an AOT order to include case management services and identify other treatment that may be included.**
- **Require a court, in developing an order for AOT, to consider any preferences and medication experiences of the subject of the petition, as well as any directions included in a durable power of attorney or advance directive.**
- **Allow a court to order AOT as an alternative to hospitalization.**
- **Limit the duration of AOT ordered by a court under an order of involuntary mental health treatment.**
- **Require an agency or mental health professional immediately to report an individual who does not comply with a court order for AOT.**
- **Allow a court to require, without a hearing, that a noncompliant individual be taken to a CMHSP preadmission screening unit or hospitalized for a limited period of time.**
- **Allow a CMHSP to receive reimbursement for AOT services, upon appropriation.**
- **Allow a CMHSP to carry forward the operating margin up to 5% of its State share of the operating budget for the fiscal years ending in 2005 through 2008.**

Senate Bill 1464 amended the Estates and Protected Individuals Code (EPIC) to allow an individual to designate a patient advocate to exercise powers regarding his or her mental health treatment decisions, and allow an individual to include in a patient advocate designation a statement of his or her desires on mental health treatment.

Senate Bills 1465, 1466, and 1467 amended the Public Health Code, the Michigan Penal Code, and the Michigan Do-Not-Resuscitate Procedure Act, respectively, to change citations to sections of EPIC that were added or amended by Senate Bill 1464.

Senate Bills 1468 through 1472 amended the Mental Health Code to do the following:

- **Revise the definition of "formal voluntary hospitalization".**
- **Include a patient advocate for an individual's mental health treatment decisions among the people who must be notified if a hospitalized patient is transferred to another facility.**
- **Include a person applying for the admission of an individual to a hospital or alternative treatment program, among the people who may request a second opinion if admission is denied.**
- **Revise the individuals who may be considered for admission to a hospital operated by the Department of Community Health (DCH) or under contract with a CMHSP.**
- **Include a patient advocate for mental health treatment decisions among the people who may execute an application for formal voluntary hospitalization.**

All of the bills were tie-barred to Senate Bill 1464, which was tie-barred to Senate Bills 1465 through 1472. Senate Bills 683 through 686 were tie-barred to each other. Additionally, Senate Bills 1468 through 1472 were tie-barred to each other. The bills are described below in further detail.

Senate Bill 683

The bill amended the definition of "person requiring treatment" in Chapter 4 of the Mental Health Code, which provides for civil admission and discharge procedures, including court-ordered involuntary treatment for a person requiring treatment. Under the Code, the term means any of the following:

-- An individual who has mental illness and, as a result of that mental illness, can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself or herself or another person, and who has engaged in an act or acts or made significant threats that substantially support the expectation.
-- An individual who has mental illness and, as a result of that mental illness, is unable to attend to his or her basic physical needs such as food, clothing, or shelter that must be attended to in order to avoid serious harm in the near future, and who has demonstrated that inability by failing to attend to those basic physical needs.
-- An individual with mental illness, whose judgment is so impaired that he or she is unable to understand his or her need for treatment and whose continued behavior as a result of the mental illness can reasonably be expected, on the basis of competent clinical opinion, to result in significant physical harm to himself, herself, or others.

The bill added to the definition "an individual who has mental illness, whose understanding of the need for treatment is impaired to the point that he or she is unlikely to participate in treatment voluntarily, who is currently noncompliant with treatment that has been recommended by a mental health professional, and that has been determined to be necessary to prevent a relapse or harmful deterioration of his or her condition and whose noncompliance with treatment has been a factor in the individual's placement in a psychiatric hospital, prison, or jail at least 2 times within the last 48 months or in the individual's committing one or more acts, attempts, or threats of serious violent behavior within the last 48 months". An individual meeting these criteria only is eligible to receive AOT under Section 433 or 469a (which were added and amended, respectively, by Senate Bill 684).

Senate Bill 684

AOT Petition & Order

The bill added Section 433 to the Mental Health Code to provide that any individual at least 18 years old may file a petition with the court asserting that a person meets the criteria for AOT specified in Section 401(d) of the Code (which Senate Bill 683 added). The petition must contain the facts that are the basis for the assertion; the names and addresses, if known, of any witnesses to the facts; the name and address of the mental health professional currently providing care to the subject of the petition; and the name and address of the nearest relative or guardian, if known, or, if none, a friend, if known, of the subject.

Upon receiving the petition, the court must inform the subject and the CMHSP serving the community in which he or she lives that the court is required to hold a hearing to determine whether the subject meets the criteria for AOT. Notice must be provided as set forth in Section 453 of the Code, and the hearing must be governed by Sections 454, 458 to 464, and 465 (which set forth the requirements for a hearing for any "person requiring treatment", as described below).

If the court verifies in the hearing that the subject of the petition meets the criteria for AOT and is not scheduled to begin a course of outpatient mental health treatment that includes case management services or assertive community treatment team services, the court must order the person to receive AOT through his or her local CMHSP. The order must include case management services. The order may include any of the following:

-- Medication.
-- Blood or urinalysis tests to determine compliance with prescribed medications.
-- Individual or group therapy.
-- Day or partial day programs.
-- Educational and vocational training.
-- Supervised living.
-- Assertive community team treatment services.
-- Alcohol or substance abuse treatment, or both.

-- Alcohol and/or substance abuse testing for an individual with a history of alcohol or substance abuse and for whom that testing is necessary to prevent a deterioration of his or her condition. A court order for alcohol or substance abuse testing is subject to review every six months.
-- Any other services prescribed to treat the individual's mental illness and either assist the person in living and functioning in the community or help prevent a relapse or deterioration that could reasonably be predicted to result in suicide or the need for hospitalization.

To fulfill the requirements of an AOT plan, the court's order may specify the service role that a publicly-funded entity other than the CMHSP must take.

The bill states that nothing in Section 433 negates or interferes with an individual's rights to appeal under any other State law or Michigan court rule.

(Under Sections 453, 454, 458 to 464, and 465, the court must give notice of a petition and the time and place of a hearing to the subject, his or her attorney, the petitioner, the prosecuting or other attorney, the director of any hospital in which the subject is hospitalized, the subject's spouse or guardian, if applicable, and other relatives or persons as the court may determine. Within four days of receiving the necessary documents, the court must give the subject a copy of the petition and each clinical certificate executed in connection with the proceeding, and notice of the rights to a full court hearing, to be present at the hearing, to be represented by legal counsel, to demand a jury trial, and to have an independent clinical evaluation. Counsel for the subject of the petition must be allowed adequate time for investigation and preparation, and must be permitted to present the evidence the counsel believes necessary to a proper disposition of the proceedings, including evidence as to alternatives to hospitalization. The parties in the proceeding have the right to present documents and witnesses and to cross-examine witnesses. The rules of evidence in civil actions apply, unless the Code provides for a specific exemption. An individual may not be found to require treatment unless at least one physician or licensed psychologist who has personally examined him or her testifies at the hearing. Requests for continuances for any reasonable time must be granted for good cause.)

Power of Attorney & Advance Directives

Under new Section 433, in developing an order for AOT, the court must consider any preferences and medication experiences reported by the subject of the petition or his or her designated representative, whether or not the subject has an existing individual plan of services under Section 712, as well as any directions included in a durable power of attorney or an advance directive that exists. (Section 712 requires the responsible mental health agency for each Medicaid recipient to ensure that a person-centered planning process is used to develop a written individual plan of services in partnership with the recipient. The plan must consist of a treatment plan, a support plan, or both, and address the recipient's need for food, shelter, clothing, health care, employment opportunities, educational opportunities, legal services, transportation, and recreation.)

If the subject has not previously designated a patient advocate or executed an advance directive, the responsible CMHSP, before the AOT order expires, must ascertain whether the subject desires to establish an advance directive. If so, the CMHSP must direct the subject to the appropriate community resources for assistance.

If an AOT order conflicts with the provisions of an existing advance directive, durable power of attorney, or individual plan of services, the order must be reviewed for possible adjustment by a psychiatrist not previously involved with developing the order. Additionally, the court must state its findings, including the reason for the conflict, on the record or in writing if it takes the matter under advisement.

Alternative to Hospitalization

Section 469a of the Code requires a court to review a report on alternatives to hospitalization before ordering a course of treatment for an individual found to be a person requiring treatment. The report must be prepared by the CMHSP, a public or private agency, or another individual found suitable by the court, within the 15 days before the court issues the order. After

reviewing the report, the court must do all of the following:

-- Determine whether an alternative treatment program is adequate to meet the individual's needs and is sufficient to prevent harm the individual may inflict upon himself or herself or upon others in the near future.
-- Determine whether there is an agency or mental health professional available to supervise the alternative treatment program.
-- Inquire as to the individual's desires regarding alternatives to hospitalization.

If the court determines that there is an adequate and available alternative treatment program, the court must issue an order for alternative treatment or combined hospitalization and alternative treatment.

Under the bill, if the court orders AOT as the alternative to hospitalization, the order must require AOT through a CMHSP or any other publicly-funded entity necessary for fulfillment of the AOT plan. The order must include case management services. The bill's provisions regarding the content of an AOT order, and consideration of preferences, medication experiences, and directions in a power of attorney or advance directive, apply.

Reimbursement; Carryforward

Under the bill, a CMHSP that provides AOT services during a fiscal year may be eligible for reimbursement if an appropriation is made for AOT services for that fiscal year. The reimbursement is in addition to any funds that the CMHSP is otherwise eligible to receive for providing AOT services.

The bill also allows a CMHSP to carry forward the operating margin up to 5% of its State share of the operating budget for the fiscal years ending September 30, 2005, 2006, 2007, and 2008. (In the past, CMHSPs have been allowed to do this for the fiscal years ending in 1999 through 2004.)

Senate Bill 685

Duration of Treatment

Under the Mental Health Code, upon receiving an application under Section 423 or a petition under Section 434, and finding that an individual is a person requiring treatment, the court must issue an initial order of involuntary mental health treatment, which is limited in duration as follows:

-- An initial order of hospitalization cannot exceed 60 days.
-- An initial order of alternative treatment cannot exceed 90 days.
-- An initial order of combined hospitalization and alternative treatment cannot exceed 90 days, and the hospitalization portion cannot exceed 60 days.

The bill added that an initial order of AOT may not exceed 180 days. An initial order for combined hospitalization and AOT may not exceed 180 days, with the hospitalization portion being not more than 60 days.

(Under Section 423, a hospital designated by the Department of Community Health or by a CMHSP must hospitalize an individual presented to the hospital, pending receipt of a clinical certificate by a psychiatrist stating that the individual is a person requiring treatment, if an application, a physician's or licensed psychologist's clinical certificate, and an authorization by a preadmission screening unit have been executed.

Under Section 434, anyone at least 18 years old may file a petition with the court asserting that an individual is a person requiring treatment. The petition must be accompanied by the clinical certificate of a physician or licensed psychologist, unless after reasonable effort the petitioner could not secure an examination. In that case, an affidavit setting forth the reasons an examination could not be secured also must be filed.)

The Code provides that, upon receiving a petition under Section 473 (described below) before the initial order expires, and finding that the person continues to be a person requiring treatment, the court must issue a second order for involuntary mental health treatment, limited in duration as follows:

-- A second order of hospitalization cannot exceed 90 days.
-- A second order of alternative treatment cannot exceed one year.

-- A second order of combined hospitalization and alternative treatment cannot exceed one year, and the hospitalization portion cannot exceed 90 days.

Under the bill, a second order of AOT may not exceed one year.

Under the Code, upon receiving a petition under Section 473 before the second order expires, and finding that the individual continues to be a person requiring treatment, the court must issue a continued order for involuntary mental health treatment that is limited in duration as follows:

-- A continuing order for hospitalization cannot exceed one year.
-- A continuing order of alternative treatment cannot exceed one year.
-- A continuing order of combined hospitalization and alternative treatment cannot exceed one year, and the hospitalization portion cannot exceed 90 days.

The bill provides that a continuing order of AOT may not exceed one year.

Petition for Continuing Order

Section 473 states that at least 14 days before the expiration of an initial, second, or continuing order of involuntary mental health treatment, a hospital director, agency, or mental health professional supervising an individual's alternative treatment must file a petition for a second or continuing order if the hospital director or supervisor believes the individual continues to be a person requiring treatment and is likely to refuse treatment on a voluntary basis when the order expires. The petition must set forth the reasons for the determination that the individual continues to be a person requiring treatment, describe his or her treatment program and the results of that course of treatment, and contain a clinical estimate as to the time further treatment will be required. The petition also must be accompanied by a clinical certificate executed by a psychiatrist.

Under the bill, a hospital director, agency, or mental health professional supervising a person's AOT is subject to the same requirement for filing a petition.

Noncompliance with AOT Order

Under the bill, if an agency or mental health professional supervising an individual's AOT determines that the individual is not complying with the court order, the agency or mental health professional must notify the court immediately. If it comes to the court's attention that a person subject to an AOT order is not complying with it, the court may require, without a hearing, one or more of the following:

-- That the individual be taken to the preadmission screening unit established by the CMHSP serving the community in which the individual lives.
-- That the individual be hospitalized for up to 10 days.
-- Upon recommendation by the CMHSP, that the individual be hospitalized for a period of more than 10 days but not longer than the duration of the AOT order, or not longer than 90 days, whichever is less.

The court may direct peace officers to transport the individual to a designated facility or preadmission screening unit, as applicable, and may specify conditions under which the person may return to AOT before the order expires.

The bill allows an individual hospitalized without a hearing to object to the hospitalization according to the provisions of Section 475a. (Under that section, an individual who is hospitalized without a hearing after placement in an alternative treatment program has the right to object to the hospitalization. Upon transfer to the hospital, the hospital must notify the individual of his or her right to object. Upon receiving an objection, the court must schedule a hearing for a determination that the individual requires hospitalization.)

Senate Bill 686

Definition of "AOT"

The bill defines "assisted outpatient treatment" as the categories of outpatient services ordered by the court under Section 433 or 469a of the Mental Health Code (pursuant to Senate Bill 684). The bill states that the term includes intensive case management services to provide care coordination. The bill further specifies that

AOT also may include one or more of the following categories of services:

-- Medication.
-- Periodic blood tests or urinalysis to determine compliance with prescribed medications.
-- Individual or group therapy.
-- Day or partial day programming activities.
-- Vocational, educational, or self-help training or activities.
-- Assertive community treatment team services.
-- Alcohol or substance abuse treatment and counseling.
-- Periodic testing for alcohol or illegal drugs for a person with a history of alcohol or substance abuse.
-- Supervision of living arrangements.

In addition, AOT may include any other services within a local or unified services plan developed under the Code that are prescribed to treat the individual's mental illness and to assist the person in living and functioning in the community or attempt to prevent a relapse or deterioration that could reasonably be predicted to result in suicide, the need for hospitalization, or serious violent behavior.

The medical review and direction included in an AOT plan must be provided under the supervision of a psychiatrist.

Annual Report

The bill requires the DCH to make available on its website an annual report concerning AOT services in Michigan. The report must include statewide information regarding the number of individuals receiving and completing AOT, and include available cost and benefit projections concerning AOT.

The report also must include the number of AOT petitions filed, the number of court rulings on petitions that resulted in an AOT order, and the number of rulings that did not.

To the extent possible if resources are available, the DCH must attempt to use expert assistance from outside entities, including State universities, when evaluating the AOT treatment in Michigan.

Senate Bill 1464

Patient Advocate Designation

Under the Estates and Protected Individuals Code, a person who is at least 18 years old and of sound mind may designate, in writing, another individual 18 or older as a patient advocate to exercise powers concerning care, custody, and medical treatment decisions for the person making the designation (the "patient") when he or she is unable to participate in medical treatment decisions. Under the bill, an individual also may designate another person to make mental health treatment decisions for him or her.

Under the bill, "patient advocate" means an individual designated to exercise powers concerning another individual's care, custody, and medical or mental health treatment or authorized to make an anatomical gift on behalf of another individual, or both. Previously, the definition did not refer to mental health treatment.

Previously, a patient advocate designation had to be made part of the patient's medical record with the patient's attending physician and, if applicable, the facility where the patient was located. Under the bill, a patient advocate designation must be made part of the patient's medical record with, as applicable, the attending physician, the mental health professional providing treatment to the patient, the facility where the patient is located, or the CMHSP or hospital that is providing mental health services to the patient.

The Code requires a patient advocate designation to be signed by two witnesses, and lists individuals who may not be a witness. The bill also specifies that a witness to a patient advocate designation may not be an employee of the CMHSP or hospital that is providing mental health services to the patient.

(The bill defines "community mental health services program or hospital" as a CMHSP or a hospital as defined in the Mental Health Code, i.e., a program operated as a county community mental health (CMH) agency, a CMH authority, or a CMH organization; or an inpatient program operated by the DCH for the treatment of individuals with serious emotional disturbance, or a psychiatric

hospital or psychiatric unit licensed under the Code.)

Waiver of Right to Revoke

The bill added Section 5515 to allow a patient to waive the right to revoke a patient advocate designation regarding the power to exercise mental health treatment decisions by making the waiver as part of the document containing the designation. Mental health treatment provided to a patient who has communicated his or her intent to revoke a designation in which the patient has waived his or her right to revoke may not continue for more than 30 consecutive days. The bill requires the acceptance of a designation as a patient advocate to include statements corresponding to these provisions, as well as the statements already set forth in the Code.

Under Section 5515, a waiver does not affect the patient's rights under Section 419 of the Mental Health Code. (Under that section, a formal voluntary patient who is at least 18 years old may not be hospitalized for more than three days after he or she gives written notice of an intention to terminate his or her hospitalization and leave the hospital.)

Exercise of Powers

Under the new Section 5515, a patient advocate may exercise the power to make mental health treatment decisions only if a physician and a mental health practitioner both certify in writing, after examination of the patient, that the patient is unable to give informed consent to mental health treatment. In the document containing the patient advocate designation, the patient may designate a physician and/or a mental health practitioner to make this determination. If the designated physician or practitioner is unable or unwilling to conduct the examination and make the determination within a reasonable time, the examination and determination must be made by another physician or mental health practitioner.

Under EPIC, an individual designated as a patient advocate has specific authority, rights, responsibilities, and limitations. The bill added that, with regard to mental health treatment, the patient advocate may consent to the forced administration of medication or to inpatient hospitalization, other than hospitalization as a formal voluntary patient under Section 415 of the Mental Health Code, only if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to consent to that treatment. (Under Section 415 of the Mental Health Code, an individual who is at least 18 may be hospitalized as a formal voluntary patient if he or she applies for hospitalization as a formal voluntary patient; or he or she assents and his or her full guardian, limited guardian with authority to admit, or patient advocate (under Senate Bill 1472), applies and the hospital director considers the patient to be clinically suitable for that form of hospitalization.)

Mental Health Professional

Under the bill, a mental health professional who provides mental health treatment to a patient must comply with the patient's desires as expressed in the patient advocate designation. The mental health professional is not bound to follow an expressed desire if any of the following applies:

-- In the mental health professional's opinion, compliance is not consistent with generally accepted community practice standards of treatment.
-- The treatment requested is not reasonably available.
-- Compliance is not consistent with applicable law.
-- Compliance is not consistent with court-ordered treatment.
-- In the mental health professional's opinion, there is a psychiatric emergency endangering life and compliance is not appropriate under the circumstances.

The mental health professional must follow the patient's other desires as expressed in the designation.

The bill revised EPIC's definition of "mental health professional" to add a professional counselor licensed under the Public Health Code. The term also includes a licensed physician, a licensed psychologist, a licensed registered professional nurse, a licensed physician's assistant, and a certified social worker. In addition, beginning July 1, 2005, the term will include a licensed master's social worker.

Conflict between Codes

Section 5513 of EPIC stated that if any provision of Article V (Protection of an Individual under Disability and His or Her Property) conflicted with a provision of the Mental Health Code, that statute would control. The bill repealed Section 5513.

Senate Bills 1465, 1466, and 1467

The bills amended the Public Health Code, the Michigan Penal Code, and the Michigan Do-Not-Resuscitate Procedure Act to cite sections of the Estates and Protected Individuals Code that were amended or added by Senate Bill 1464.

Senate Bill 1468

The bill defines "formal voluntary hospitalization" as hospitalization of an individual based on both the execution of an application for voluntary hospitalization by the individual or by a patient advocate designated under EPIC, and the hospital director's determination that the individual is clinically suitable for voluntary hospitalization. Previously, the definition referred to the individual's execution of an application for voluntary hospitalization (as well as the hospital director's determination).

Senate Bill 1469

The bill amended the Mental Health Code to include a patient advocate designated to make mental health treatment decisions for a patient among the people who must be notified if a patient in a DCH hospital is transferred to any other hospital, or any other Department facility that is not a hospital. The Code already required that the patient and his or her guardian or nearest relative be notified at least seven days before any transfer, unless it is necessitated by an emergency. In that situation, notification must be given as soon as possible, but not later than 24 hours after the transfer.

Under the Code, if the patient or his or her guardian or nearest relative objects to the transfer, the DCH must provide an opportunity to appeal it. Under the bill, this provision also applies if the patient advocate objects to the transfer.

Senate Bill 1470

The Mental Health Code requires each CMHSP to establish at least one preadmission screening unit with 24-hour availability to provide assessment and screening services for individuals being considered for admission into hospitals or alternative treatment programs. Previously, a preadmission screening unit had to assess individuals who sought authorization for admission into hospitals operated by the DCH or under contract with the CMHSP. Under the bill, a preadmission screening unit must assess "an individual being considered for admission" into a hospital. As previously provided, if the individual is clinically suitable for hospitalization, the preadmission screening unit must authorize voluntary admission to the hospital.

Under the Code, if the preadmission screening unit denies hospitalization, the individual may request a second opinion from the executive director of the CMHSP. The executive director must arrange for an additional evaluation by a psychiatrist, physician, or licensed psychologist to be performed within three days. If the conclusion of the second opinion is different from the preadmission screening unit's conclusion, the executive director, in conjunction with the medical director, must make a decision based on all clinical information available. If the individual is found not to be clinically suitable for hospitalization, the preadmission screening unit must provide appropriate referral services. Under the bill, either the individual or the person making the application for hospitalization may request a second opinion.

Senate Bill 1471

The bill amended the Mental Health Code to provide that an individual "who requests, applies for, or assents to", either informal or formal voluntary admission to a hospital operated by the DCH or a hospital under contract with a CMHSP may be considered for admission by the hospital only after authorization by a community mental health services preadmission screening unit. Previously, the Code referred to an "individual seeking…admission".

Senate Bill 1472

The bill amended the Mental Health Code to include a patient advocate authorized to make mental health treatment decisions among the people who may execute an application for formal voluntary hospitalization of an individual at least 18 years old who assents to the hospitalization. Previously, only an individual or, with his or her assent, the individual's full guardian, or his or her limited guardian with authority to admit, could execute an application for hospitalization.

MCL 330.1401 (S.B. 683)
330.1226 et al. (S.B. 684)
330.1472a et al. (S.B. 685)
330.1100a et al. (S.B. 686)
700.1106 et al. (S.B. 1464)
333.5653 & 333.5654 (S.B. 1465)
750.145n (S.B. 1466)
333.1052 (S.B. 1467)
330.1400 (S.B. 1468)
330.1407 (S.B. 1469)
330.1409 (S.B. 1470)
330.1410 (S.B. 1471)
330.1415 (S.B. 1472)

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

This legislation is commonly referred to as "Kevin's Law", after 24-year-old Kevin Heisinger, who was on his way home from the University of Michigan, where he planned to attend graduate school, when he was beaten to death in the restroom of the Kalamazoo bus station. His attacker suffered from schizophrenia and had a history of noncompliance, contact with police, brief periods of treatment, and relapse. Reportedly, in the weeks before Kevin's death, his assailant exhibited strange behavior, including brandishing a knife and walking naked down the street, but was not thought to present an imminent danger. Senate Bills 683 through 686 will help get people like Kevin's attacker into appropriate programs when they are so severely mentally ill that they cannot recognize the need for treatment. This will reduce the likelihood that they will harm themselves or others and increase their chances of successfully achieving more independence in all aspects of life.

Michigan's commitment laws were written when many mentally ill people were treated on an inpatient basis in psychiatric hospitals. Over the last few decades, however, as the understanding of mental illness has changed, a shift characterized by a preference for outpatient treatment in less restrictive settings has occurred within the psychiatric and public policy arenas. While there were 15 State-operated psychiatric hospitals in Michigan in 1991, there now are only four. Similarly, the number of private psychiatric hospital beds has decreased by 40% over the last 10 years. The bills modernize the State's commitment laws to reflect more accurately the existing structure of the mental health system.

Under the previous law, for a person to be ordered into any type of treatment, whether inpatient or outpatient, he or she had to present a clear and imminent threat of physical danger; lack the ability to attend to his or her basic physical needs; or demonstrate judgment so impaired that he or she could not understand that treatment was necessary and that his or her behavior could result in physical harm. Some people with severe and persistent mental illness do not meet any of these criteria, but clearly need treatment. These people tend to slip through the cracks, often becoming caught in a cycle of repeated encounters with law enforcement, incarceration, and brief periods of hospitalization. They might lose contact with their families, or even be evicted by family members who feel they have no other choice, and ultimately become homeless. Also, compared with the general population, the severely mentally ill are at a greater risk of victimization by others, and commit suicide more frequently. By expanding the criteria under which an individual can be ordered into treatment, the bills should prevent potentially violent incidents, enable the person gradually to gain more control over his or her condition, and improve the quality of his or her life.

Although AOT is involuntary under Senate Bills 683 through 686, it is less restrictive than hospitalization. According to a series of studies conducted by researchers from Duke University, people who underwent sustained periods of high-intensity AOT showed improved compliance with medication and

reduced substance abuse, which in turn led to a reduction in violent behavior, arrests, hospital recidivism, and victimization by others. Assisted outpatient treatment also has been shown to reduce the average length of hospital stays. Under this form of treatment, people with mental illness have time to stabilize on their medications and benefit from services, which enables them to live in their own homes, maintain employment, and have successful relationships with their families and friends. The use of AOT also might reduce State and local corrections costs by diverting people from the criminal justice system to the mental health system, which is a more appropriate setting for many.

Other states have turned to AOT as an effective option for treating people who do not present an imminent threat of physical danger, but might in the future without appropriate services. Kevin's Law is similar to a New York law enacted after a schizophrenic man pushed a woman off of a subway platform into the path of an oncoming train. Like Kevin Heisinger's attacker, the man had a history of failing to take his medication after being discharged from psychiatric treatment. This legislation will help prevent similar incidents.

Supporting Argument

There has been a great need for a clear statutory procedure under which a person can be assured that his or her lawful desires regarding mental health treatment decisions will be observed if he or she becomes incapable of making those decisions. If a patient is incapacitated by mental illness, others must make treatment decisions, which might be contrary to the patient's wishes. A person with mental illness may realize that his or her condition might deteriorate in the future and that his or her decision-making ability will become impaired. Mentally ill or not, a person should be able to feel reassured that his or her wishes will be given the same respect during a period of incapacity that they would receive if he or she were competent.

While not allowing a patient advocate to make any decisions the patient could not make himself or herself, Senate Bills 1464 through 1472 will protect the patient's right both to make decisions and have them carried out, and not to have other decisions made on his or her behalf. Senate Bill 1464 requires both a physician and a mental health practitioner to examine the patient and certify that he or she is unable to give informed consent to mental health treatment before a patient advocate may exercise the power to make treatment decisions. Furthermore, a patient advocate may consent only to the forced administration of medication or inpatient hospitalization to which the patient has expressed in a clear and convincing manner that the patient advocate is authorized to consent.

Supporting Argument

Community mental health services programs should be encouraged to be innovative and efficient in the delivery of mental health services. As allowed for the past five years, retaining a portion of their unspent budgeted funds can help CMHSPs accomplish that goal. Extending the Mental Health Code's authorization for CMHSPs to carry forward those funds, as Senate Bill 684 does, is in the best interests of Michigan's citizens. In addition, reimbursing a CMHSP if it provides AOT services, subject to appropriations, will give CMHSPs both an incentive to offer the services and access to additional funding in subsequent fiscal years.

Opposing Argument

Senate Bills 683 through 686 reflect a paternalistic attitude toward people with mental illness and will help perpetuate the stereotype that all mentally ill people are violent and dangerous, as well as infringe on their civil liberties. Under the bills, an individual merely must be found noncompliant with treatment, not dangerous, to be ordered into AOT.

A person may be "noncompliant" for numerous reasons. He or she might experience intolerable, or even disabling, side effects from psychotropic drugs, particularly during the period of trial-and-error before he or she is stabilized on medication. A person who is not Medicaid-eligible might not be able to afford the appropriate medication or private insurance with prescription coverage. A patient who does not feel that he or she has a good relationship with his or her doctors or other treatment providers might not think that the treatment course they recommend is appropriate. Noncompliance is not due

simply to stubbornness or an inability to recognize that one is mentally ill.

According to a study by the Rand Corporation, there is no evidence clearly linking AOT with recovery from mental illness. The Duke study mentioned above contained certain methodological limitations that cast doubt on its findings. Additionally, the Duke researchers found that a court order was effective when combined with intensive outpatient treatment services over a long period of time. It is unclear whether the court order or the intensity of the services resulted in the patients' improvement. Perhaps the same results could be achieved without a court order, provided that patients had sustained, regular access to high-intensity services. A brief period of court-ordered treatment might have no effect whatsoever.

Some people believe that coerced care actually can have an adverse effect on a patient's progress. A competent person might feel demeaned if denied the choice to receive treatment. Moreover, any patient who expresses dissatisfaction with or repeatedly rejects services that do not meet his or her needs might be labeled "noncompliant" and ordered into treatment. The bills might undermine the patient-counselor relationship and discourage people from seeking help for fear that the law will be used against them.

A person already could be ordered into involuntary outpatient treatment under the previous law, if a compelling argument could be made for doing so. Allowing a person to be ordered into outpatient treatment without a demonstration that he or she is dangerous is a step toward treating all mentally ill people in the same way, whether or not they present a threat.

Response: Concern for the civil liberties of the mentally ill must be balanced with concern for public safety. Some people are so severely mentally ill that they cannot recognize their own need for treatment. Unlike physical ailments for which a person may not be compelled to receive treatment, mental illness affects a person's ability to make rational decisions. Indeed, in some situations in which a person's decision-making ability is impaired, it would be irresponsible to accommodate his or her desires. Senate Bill 684, however, requires the court to consider the individual's preferences.

When a person suffers from severe mental illness, it is the illness that restricts his or her civil liberties; treatment such as AOT might enable the person to regain the ability to exercise and enjoy them. Furthermore, increased use of AOT will reduce the need for incarceration and involuntary hospitalization, thus allowing individuals to retain more of their civil liberties. Other states' AOT laws that have been challenged have not been overturned as unconstitutional.

It is impossible to predict when an individual who currently is not dangerous could become dangerous. Sometimes, the first indication that an individual presents a threat is a serious, violent incident in which the person hurts himself or herself or another person. Under the previous law, a court could order an individual into outpatient treatment only if he or she met the same criteria as required for inpatient treatment. By the time an individual can be shown to meet those criteria, however, it might be too late. The bills allow a court to order an individual who does not require hospitalization into the less restrictive setting of AOT before an emergency situation arises. This will do a great deal to eliminate the underlying "fail first" philosophy in the previous law, which prevented families from getting proper treatment for their loved ones until they were experiencing a crisis. Furthermore, under Senate Bill 683, to be eligible for AOT, a person must have been noncompliant *and* have been incarcerated or hospitalized at least twice in the previous four years, or have committed or threatened to commit a violent act, due, at least in part, to the noncompliance. This will ensure that only people who have been repeatedly noncompliant and suffered negative consequences as a result are affected by the bills. Presumably, the people who meet these criteria will be those who suffer from severe mental illness, such as paranoid schizophrenia. It is estimated that there are only between 300 and 400 people with this diagnosis in the State.

Opposing Argument

Senate Bills 683 through 686 unfairly blame patients for being mentally ill, rather than blame the public mental health system that

has failed to treat them thus far. This system is complex and difficult to navigate, and budgetary constraints sometimes lead to a lack of appropriate services in communities. Thus, some people who would like to receive voluntary treatment cannot. Even in cases in which involuntary outpatient commitment is appropriate, Michigan's mental health system is ill-equipped to provide intensive, effective treatment. The State should focus its efforts and resources on closing the significant gaps that exist in the provision of services. A more comprehensive mental health care system would enable people to receive treatment voluntarily while they still possessed the ability to make that choice.

Response: While the State's mental health care system certainly could be improved, a broader array of services and increased access to them alone will not help everyone. Laws containing a coercive element still are needed to ensure that some people with severe and persistent mental illness receive the proper treatment. The existence of gaps in service does not negate the fact that some people could benefit from AOT. Severely mentally ill people should not be allowed to continue slipping through the cracks, possibly harming themselves or others, simply because the current system is not perfect.

Legislative Analyst: Julie Koval

FISCAL IMPACT

Senate Bills 683 through 686

Requiring CMHSPs to provide services under a court order via assisted outpatient treatment will not produce a direct cost to the State. A person under court order either is or is not eligible for Medicaid. If the person is Medicaid-eligible, the CMHSP receives payments under a capitation model, not a fee-for-service model, so the costs of the treatment are absorbed by the CMHSP.

If the person is not Medicaid-eligible, the CMHSP must pay for the services by using its non-Medicaid State funding. This results in less funding being available for services to other non-Medicaid CMHSP clients; as non-Medicaid services are not an entitlement, however, there is no increase in cost, just a shift in who receives services and who is put on a waiting list.

There will be a cost increase for pharmaceuticals for Medicaid-eligible individuals, as pharmaceutical costs are paid by the State, not by the CMHSP. There are many new psychotropic medications that are quite helpful in treatment, but are also expensive. Without experience-based data on the number of individuals ordered to receive assisted outpatient treatment, it is difficult to estimate the cost, although it will be relatively small compared with the annual adjustments to the Pharmaceutical Services line item in the DCH budget. For instance, if 100 individuals were ordered to receive AOT and their medications cost an average of $10,000 per year, the net cost increase would be $1.0 million Gross and $441,100 GF/GP.

The bills also will potentially increase local court costs by requiring court investigations on petitions of AOT criteria and regular reviews of court orders for alcohol or substance abuse testing.

Senate Bills 1464 through 1472

The bills expand the scope of designated patient advocates to cover mental health services, with certain safeguards. This expansion might lead to occasions in which a person is ordered to receive mental health treatment, and thus might lead to an indeterminate increase in State and local costs.

Fiscal Analyst: Steve Angelotti
Bethany Wicksall

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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.