

MENTAL HEALTH CODE: REVISE ASSISTED OUTPATIENT TREATMENT PROGRAM

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House Bill 4674 (reported from committee as H-2)
Sponsor: Rep. Tom Leonard
Committee: Health Policy
Complete to 10-1-15

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: The bill would modify the Mental Health Code's "assisted outpatient treatment" program, allowing probate courts and community mental health agencies to implement the revised program by April 1, 2016.

FISCAL IMPACT: House Bill 4674 may have a net direct fiscal cost to the state and local units of government. The actual fiscal impact is indeterminate but should be minimal. Some of the fiscal costs are outlined in *Fiscal Information*, below.

THE APPARENT PROBLEM:

In 2004, the Michigan legislature enacted four laws—known collectively as Kevin's Law—to authorize courts and community mental health agencies to develop and utilize "assisted outpatient treatment" programs, generally used in lieu of hospitalization for people who fail to comply with prescribed treatments. Public Acts 496, 497, 498, and 499 of 2004 went into effect March 30, 2005.

Generally, Kevin's Law amended the Mental Health Code to allow court-ordered "assisted outpatient treatment" for people with mental illness who were least able to help themselves or most likely to present a risk to others. Under the laws, probate court judges could order treatment for individuals with serious mental illness who did not meet the traditional section 401 statutory criteria for involuntary hospitalization, but who needed mandated outpatient mental health treatment to protect themselves and others. See *Background Information*, below.

The 2004 laws (1) expanded the definition of "person requiring treatment" for the purpose of court-ordered involuntary treatment; (2) created a process for filing a petition with the court to establish that an individual is a "person requiring treatment" and is in need of "assisted outpatient treatment"; (3) provided limits to the duration of an order for "assisted outpatient treatment"; and (4) defined "assisted outpatient treatment," listing possible categories of services that could be prescribed.

When enacted, expectations were high that the new alternative treatments would lower too-frequent hospitalization costs, as had occurred in the State of New York when a similar program was put in place. However, in March 2015, the Mental Health Association of Michigan, together with its "Partners in Crisis" Mental Health & Justice Coalition, published *"A 2014 Survey of Michigan Probate Courts and Community Mental Health Services Programs Regarding Assisted Outpatient Treatment ('Kevin's Law')."* The survey results concluded that "assisted outpatient treatment appeared to be little used outside

Oakland County..." The chief reason given for non-usage was that the state's existing law was too complex and confusing.

To clarify Kevin's Law and encourage its use, House Bill 4674 has been introduced to modify more than 30 sections of the Mental Health Code, easing implementation of Michigan's now decade-old but significantly underutilized "assisted outpatient treatment program."

THE CONTENT OF THE BILL:

House Bill 4674 (H-2) would amend 31 sections of Michigan's Mental Health Code to modify the "assisted outpatient treatment" program. The bill would take effect 90 days after it was enacted into law, or April 1, 2016, whichever is later.

A detailed description of the bill follows.

Definition of Assisted Outpatient Treatment

House Bill 4674 (H-2) would modify the definition of "assisted outpatient treatment" or AOT, to specify that AOT would mean the categories of outpatient services ordered by the court under Section 468 or Section 469a of the Mental Health Code. The definition also further specifies that assisted outpatient treatment "may include" case management services to provide care coordination. Now under the law, AOT includes case management services.

Definition of "Emergency Situation"

The bill would modify the definition of "emergency situation." Now under the law, the term is defined in three ways, any one of which can apply. An "emergency situation" is a situation in which an individual is experiencing a serious mental illness or a developmental disability, or a minor is experiencing a serious emotional disturbance, and one of the following applies: (1) the individual can reasonably be expected within the near future to physically injure himself, herself, or another individual, either intentionally or unintentionally; or (2) the individual is unable to provide himself or herself food, clothing, or shelter or to attend to basic physical activities such as eating, toileting, bathing, grooming, dressing, or ambulating, and this inability may lead in the near future to harm to the individual or to another individual.

House Bill 4674 would retain both of these meanings. Under the bill, "emergency situation" could also mean *the individual has mental illness that has impaired his or her judgment so that the individual is unable to understand his or her need for treatment, and that impaired judgment, on the basis of competent clinical opinion, presents a substantial risk of harm to the individual or others in the near future.*

Definition of "Person Requiring Treatment"

House Bill 4674 would then modify the term "person requiring treatment" to include, among other things, an individual whose mental illness creates an "emergency situation" described above. That is, a *person requiring treatment is an individual who has mental illness, whose judgment is so impaired by that mental illness that he or she is unable to understand his or her need for treatment, and whose impaired judgment, on the basis of*

competent clinical opinion, presents a substantial risk of harm to the individual or others in the near future.

The bill would eliminate a definition that is now in the law for the term "psychiatric partial hospitalization program."

Assisted Outpatient Treatment

Under the Mental Health Code, a probate court must take action if a person requires mental health treatment, generally ordering either hospitalization (in public or private facilities), or a program of treatment that is an alternative to hospitalization, or some combination of the two. House Bill 4674 would add "assisted outpatient treatment" to the list of possible interventions available to the court, and allow "assisted outpatient treatment" to be combined with hospitalization.

Specifically, the bill would enable a probate court to order an individual to receive "assisted outpatient treatment" through a community mental health services program (or another entity designated by the Michigan Department of Health and Human Services), that is capable of providing the necessary treatment and services to assist the individual to live and function in the community.

Under the bill, the court could (but is not required to) include case management services, and one or more of the following:

- medication;
- blood or urinalysis tests to determine compliance with or effectiveness of prescribed medication;
- individual or group therapy, or both;
- day or partial day programs;
- educational or vocational training;
- supervised living;
- assisted community treatment team services;
- substance use disorder treatment;
- substance use disorder testing for individuals with a history of alcohol or substance use (subject to review once every 180 days); and
- any other services prescribed to treat the individual's mental illness, and either to assist the individual in living and functioning in the community or to help prevent a relapse or deterioration that may reasonably be predicted to result in suicide, or the need for hospitalization.

The bill requires that when developing the "assisted outpatient treatment" order, the court consider any preference or medication experience reported by the individual (or a designated representative); whether or not the individual had an existing individual plan of services under Section 712; and any direction included in an existing durable power of attorney or advance directive.

The bill specifies that before an order of "assisted outpatient treatment" expired, if the individual had not previously designated a patient advocate or executed a durable power

of attorney or an advance directive, then the responsible community mental health services program would ascertain whether the individual desired to do so, and if so, direct that individual to appropriate community resources for assistance.

Under the bill, if an order for "assisted outpatient treatment" conflicted with the provisions of an existing durable power of attorney, advance directive, or individual plan of services (developed under Section 712), then the "assisted outpatient treatment" order would have to be reviewed for possible adjustment by a psychiatrist not previously involved with developing the AOT order. If there were a conflict, the court would be required to state the court's findings on the record, or in writing if the court took the matter under advisement, including the reasons for the conflict.

Funding

Now under the law, the Mental Health Code requires the state to financially support, in accord with Chapter 3 of the Mental Health Code, community mental health services programs. House Bill 4674 would retain this provision. However, the bill would require a community mental health services program to determine an individual's eligibility for a private health insurer, Medicaid, or Medicare, and then bill them first before expending money from the state General Fund when providing treatment and services to an insured or program-eligible individual.

Time Frame

The bill specifies that under this chapter of the code, any reference to a "time frame" of 12 hours to 168 hours, or an equivalent amount of days, would exclude Sundays and legal holidays.

Forms

Now under the law, the Department of Health and Human Services prescribes the forms used by hospitals, while the forms that may be used in court proceedings are subject to the approval of the Michigan Supreme Court. House Bill 4674 would require, instead, that "at the direction of the Supreme Court, the State Court Administrative office shall prescribe the forms used for court proceedings under this chapter."

Hospital Admissions

Now under the law, a hospital designated by the Department of Health and Human Services or by a community mental health services program, is required to hospitalize an individual, pending receipt of a clinical certificate by a psychiatrist stating that the individual is a person requiring treatment, or by a court petition, or by a physician's or a licensed psychologist's clinical certificate, and an authorization by a pre-admission screening unit. House Bill 4674 would retain this provision, and clarify that for a hospitalized individual, a petition would have to be executed no more than 10 days before the individual was presented to the hospital, and in addition, the petition would have to meet the conditions set forth in Sections 434(1) and (2) of the Mental Health Code.

The law now requires that each community mental health services program designate the hospitals with which it has a contract to receive and detain individuals, whether the

admission takes place under Section 427 or 428 of the code. House Bill 4674 would modify this provision. Specifically, the bill would eliminate the reference to Section 428, retain the reference to Section 427, and then add four additional sections—426, 435, 436, and 438—each of which describes particular circumstances under which peace officers and probate courts deliver individuals to hospital screening rooms when mental health services are sought.

Under the law, individuals who are presented for examination under these five sections of the Mental Health Code cannot be detained for more than 24 hours, and during that time they must be examined by a physician or a licensed psychologist. Under the bill, this provision would apply, unless a clinical certificate had already been presented to the hospital. Further, the law requires that a preadmission screening unit must provide an examination within two hours of admission, and the bill retains this requirement.

Filing a petition seeking AOT treatment

Under the Mental Health Code, any person over age 18 can file a petition in court to assert that an individual requires mental health treatment. Generally, the petition contains the facts that are the basis for the assertion, the names and addresses of any witnesses, and the name and address of the nearest relative or a friend of the individual. The petition is accompanied by a *clinical certificate* of a physician or a licensed psychologist, unless it was impossible to secure an examination and have the certificate issued. Under the law, a clinical certificate that accompanies a petition must have been executed within 72-hours before the filing of the petition, and after personal examination of the individual. House Bill 4674 would retain all of these provisions.

In addition, the bill specifies the petition may assert that the subject of the petition should receive assisted outpatient treatment, in accord with Section 468(2)(e) of the Mental Health Code. Further, the bill specifies that a petition that does not seek hospitalization but only requests that the subject receive "assisted outpatient treatment" would not be subject to the clinical certificate requirements noted above.

Clinical certificates transmitted to court; AOT exemption

Currently under the law, when a probate court orders that an individual be examined—which must occur within 24-hours of being detained—the examining physician or licensed psychologist transmits a *clinical certificate* to the court (or reports that a clinical certificate is not warranted). House Bill 4674 would retain this provision, but specify that the *examining psychiatrist* transmit the certificate. Further, the bill requires that after each examination ordered, the examining psychiatrist, or the examining physician or licensed psychologist (as applicable), either transmit a clinical certificate to the court, or report to the court that execution of a clinical certificate is not warranted.

However, House Bill 4674 specifies that this section would not apply to a petition filed under Section 434(6)—a subsection of the code proposed by the bill—that allows a petition that does not seek hospitalization, but, instead, requests that the subject of the petition receive "assisted outpatient treatment" (AOT).

Court hearings

Now the Mental Health Code specifies that court hearings be convened and governed by Sections 452 to 465 of the code. House Bill 4674 would retain this provision, but specify that Sections 453(2), 453a, and 455(3) to (11) would not apply to a petition seeking only "assisted outpatient treatment" (AOT).

Instead, the bill requires that a hearing for a petition seeking only "assisted outpatient treatment" (AOT) be convened not more than 28 days after the filing of the petition (unless the petition was filed while the subject was an inpatient at a psychiatric hospital, in which case the hearing would be convened within seven days of the filing of the petition).

Legal representation

The Mental Health Code specifies that every individual who is the subject of a petition is entitled to be represented by legal counsel, and the law describes various rights to counsel, guaranteed to those who are the subjects of petitions. For example, legal counsel for petitioners who are hospitalized pending a court hearing must consult in person with the individual not more than 72 hours after the petition (and clinical certificates) have been filed with the court.

Under the code, the subject of a petition has the right to be present at all hearings, a right that may be waived with a signed statement. House Bill 4674 would retain this provision, and specify that the subject of a petition seeking only assisted outpatient treatment (AOT) could stipulate to the entry of any order for treatment. However, a subject of this petition who was hospitalized would have the right to meet—within 72 hours—with legal counsel, a treatment team member assigned by the hospital director, and a person assigned from the community mental health service program—to be informed about, among other things, the proposed plan of treatment in the hospital.

Physical examinations.

The Mental Health Code prohibits an individual from being found to require treatment unless at least one physician or licensed psychologist personally examines the individual and testifies, in person or by written deposition, at the hearing. House Bill 4674 would retain this provision.

Further, the bill specifies that the subject of a petition seeking only assisted outpatient treatment (AOT), who did not have a psychiatrist's *clinical certificate*, could not be found to require treatment unless at least one physician or licensed psychologist, and one psychiatrist who had personally examined that individual, testified, in person or by written deposition, at the hearing. Under the bill, these required examinations for these petitioners would be arranged by the court and the local community mental health services program, or other entity designated by the Department of Health and Human Services.

Repealed sections of the Mental Health Code

House Bill 4674 would repeal four sections of the Mental Health Code: Michigan Compiled Law Sections 330.1116a, 330.1424, 330.1428, and 330.1433.

MCL 330.1116a is a section of the law that requires the department to make available on its website an annual report concerning assisted outpatient treatment services, including, among other things, the number of assisted outpatient treatment *petitions* filed under Section 433, as well as the number of *court rulings* under Section 433, including both those that resulted in an assisted outpatient treatment order and those that did not.

MCL 330.1424 is a section of the law concerning an application for hospitalization of an individual under Section 423, requiring that the application contain an assertion that the individual is a person requiring treatment as defined in Section 401.

MCL 330.1428 is a section that allows a person who is executing an application for hospitalization to present it to the court, despite the fact that he or she had been unable to secure an examination of the individual by a physician or a licensed psychologist. If the court is satisfied the application is reasonable, then the court can order the individual to be examined at a preadmission screening unit designated by the community mental health agency, and also can order a peace officer to take the individual to the preadmission screening unit, for possible referral on to a hospital.

MCL 330.1433 is a detailed section of the law that lists the possible treatments a court, following a hearing, can include in an individual's assisted outpatient mental health treatment order. This section of the law requires, among other things, that the court's order include case management services. With a few exceptions, these treatment possibilities would continue under the bill, although the bill does not require case management services.

MCL 330.1100a et al

BACKGROUND INFORMATION:

Kevin's Law was named for a graduate student, Kevin Heisinger, who attended the University of Michigan. Returning home to Kalamazoo using public transit, Kevin was killed in the bus station by a man with a long history of schizophrenia who avoided treatment, and who had been in and out of the mental health care system for years.

Kevin's Law—four laws, in all, including Public Acts 496, 497, 498, and 499 of 2004—was designed to allow judges to order "assisted outpatient treatment" for people who are mentally ill and who are not following their treatment plan.

The goal of Kevin's Law is to allow family, friends, community mental health care providers, or others the opportunity to petition the probate court to order appropriate mandated outpatient mental health care, with the hope of reducing the risk of adverse consequences for both the individual and the community, in cases where individuals do not recognize their own need for treatment. The laws were an attempt to prevent avoidable tragedies while keeping individuals in the community with treatment and services.

FISCAL INFORMATION:

The definition of a person requiring treatment under subdivision (c) replaces "continued behavior" with "impaired judgement," which could expand the number of persons that meet the criteria for requiring mental health treatment. Any expansion of the definition of a person requiring treatment would increase the cost to the state and local units of government.

CMHSPs may incur additional administrative costs to determine an individual's eligibility for other insurance providers, which would pay for providing treatment. CHMSPs under contract with the Department of Health and Human Services are already required to identify and seek recovery from other liable third parties, so most of these revisions should codify current contractual requirements. Any additional administrative costs should be offset in the near term through enhanced efforts to identify and collect additional third party liabilities.

The local probate courts may see additional petitions asserting that an individual is a person requiring treatment based on the repeal of Section 424, which permits an individual to file an application with a hospital prior to the filing of a petition with the local probate court.

Both the Department of Health and Human Services and the State Court Administrative Office will incur one-time costs to update forms and training materials based on changes to assisted outpatient treatment and civil admissions related to mental illness in general.

Additionally, this bill also expands when local CMHSPs can recommend assisted outpatient treatment and when probate courts can order assisted outpatient treatment. Any potential costs or savings from assisted outpatient treatment expansion are not mandated by this bill and would therefore be left to each local unit to decide if investment in assisted outpatient treatment is a worthwhile endeavor. Section 308 of the Mental Health Code (MCL 330.1308) establishes the financial liability of the state for mental health services at 90% of the net cost, but Section 308 also specifies that state financial liability is subject to the funds appropriated by the Legislature.

ARGUMENTS:

For:

Proponents of the bill, including the Mental Health Association of Michigan, note that "the concept of Kevin's Law is to provide community services to persons with severe mental disorders who are adjudicated unlikely to participate voluntarily in treatment for their conditions."

The Association argues this legislation makes five important changes to Michigan's now significantly underutilized law: it sets timely court hearings; makes clear the need for two exams (at least one being by a psychiatrist); removes one eligibility criterion making the application of Kevin's Law more likely as a community step-down when someone is discharged from a psychiatric hospital; involves prosecutors (as for other court-ordered

mental health treatments); and finally, the bill unifies and simplifies the petition and certification processes used to seek court-ordered care, without diminishing a patient's rights.

For:

This legislation has the potential to save Michigan taxpayers money. In June 2012 the *Michigan Bar Journal* published an overview of "Mental Illness and the Courts." The article notes there are 1.4 million Michigan adults with some form of mental illness.

The article's author, a Michigan judge, writes: "In 2005, legislation was...enacted in Michigan to allow the probate court or offer involuntary assisted outpatient treatment for individuals who are mentally ill and have stopped or are unwilling to continue mental health counseling. This legislation, known as Kevin's Law, increased significantly the ability of the courts to help and protect families and the community by requirement those with mental illness to participate in assisted outpatient treatment. Kevin's Law enables a community mental health agency to set up by court order a program of mental health treatment using a wraparound approach with provisions, if needed, for alcohol and substance abuse."

The articles continues: "In New York, similar legislation over a five-year period resulted in 74 percent fewer cases of homelessness, 77 percent less psychiatric hospitalization, 83 percent fewer arrests, and an 87 percent reduction in the use of incarceration. In just one year, a similar law in North Carolina resulted in a reduction in arrests of persons with a prior history of multiple hospitalization from 45 percent to 12 percent after use of assisted outpatient treatment."

Against:

One opponent of these changes to Kevin's Law expressed fear the proposed law diminishes the right of the mentally ill to refuse treatment. He noted that the effects of the drugs used to treat mentally ill people in outpatient settings are powerful and have troubling side-effects. Those suffering from mental illness must retain their ability to refuse these court-ordered drug treatments, many of which could be categorized as assisted outpatient treatment.

POSITIONS:

The Mental Health Association of Michigan supports the bill. (9-29-15)

The Michigan Psychiatric Society supports the bill. (9-22-15)

The National Association of Social Workers supports the bill. (9-22-15)

Lincoln Behavioral Services supports the bill. (9-22-15)

Treatment Advocacy Center supports the bill. (9-22-15)

National Alliance on Mental Illness supports the bill. (9-22-15)

The Michigan Academy of Pediatrics supports the bill. (9-29-15)

The Michigan Department of Health and Human Services supports the bill. (9-29-15)

Hope Network supports the bill. (9-29-15)

A mental health civil rights advocate testified in opposition to the bill. (9-22-15)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.