

INVOLUNTARY HOSPITALIZATION PETITIONS: REQUIRE CONFIDENTIALITY

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House Bill 4793 (reported by committee w/o amendment)
Sponsor: Rep. Peter J. Lucido
Committee: Judiciary
Complete to (11-2-15)

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

BRIEF SUMMARY: The bill requires that information, including a clinical certificate by a physician or psychologist, contained in a petition for involuntary hospitalization of a person requiring mental health treatment be confidential and not be disclosed except to persons authorized under the Mental Health Code.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on how provisions of the bill affect probate court caseloads and the related administrative costs. Currently, about half of the probate courts maintain mental illness files publicly and the other half maintain mental illness files confidentially. Maintaining all mental illness files confidentially would require some of the courts to separate the files into public files and confidential files. Financial costs would likely be minimal, but would depend on existing caseload and staffing levels.

THE APPARENT PROBLEM:

Currently, under Section 434 of the Mental Health Code, anyone at least 18 years old, including a law enforcement officer, may file a petition with the probate court asserting that another individual is a person requiring treatment. The petition must contain the facts that are the basis for the assertion as well as names and addresses, if known, of any witnesses to the facts and of the nearest relative or guardian or, if none, a friend of the individual. The petition must also 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. If a person is ordered to receive treatment, the code establishes the processes and protections (e.g., scheduled re-evaluations).

The information contained in the petition is often of a highly personal nature and may or may not be factually accurate. Yet, the petition, along with the certificate signed by the health professional, is treated as public information and available to anyone to see. Reportedly, some individuals have been haunted by petitions filed by relatives, acquaintances, or police officers years and even decades later and been denied jobs or passed over for promotions based wholly or in part on information contained in these documents.

Some courts in the state treat the involuntary hospitalization, or commitment, petitions and accompanying clinical certificate as confidential information and do not allow access by the general public. Other courts, however, do allow anyone to access the documents. It

has been suggested that the petitions and clinical certificates be treated similarly to other health and mental health information and not be accessible by the general public.

THE CONTENT OF THE BILL:

House Bill 4793 would amend Chapter 4 of the Code, entitled "Civil Admission and Discharge Procedures: Mental Illness," to specify that a petition and any clinical certificate filed under Section 434 (involuntary hospitalization or commitment) must be maintained by the court as a confidential record and in a manner to prevent disclosure of the filing and content of the petition or clinical certificate to the public or to any person not specifically authorized under Chapter 4 to receive notice of the petition or clinical certificate (MCL 330.1434). The bill would take effect 90 days after enactment.

BACKGROUND INFORMATION:

"Person requiring treatment" is defined in the Mental Health Code to mean:

- (a) An individual who has mental illness, and who as a result of that mental illness can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself, or another individual, and who has engaged in an act or acts or made significant threats that are substantially supportive of the expectation.
- (b) An individual who has mental illness, and who as a result of that mental illness is unable to attend to basic physical needs such as food, clothing, or shelter that must be attended to in order for the individual to avoid serious harm in the near future, and who has demonstrated that inability by failing to attend to those basic physical needs.
- (c) An individual who has mental illness, whose judgment is so impaired that he or she is unable to understand the need for treatment and whose continued behavior as the result of this mental illness can reasonably be expected, on the basis of competent clinical opinion, to result in significant physical harm to himself, herself, or others. This individual shall receive involuntary mental health treatment initially only under the provisions of Sections 434 through 438.

—Or—

- (d) 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 two times within the last 48 months or whose noncompliance with treatment has been a factor in the individual's committing one or more acts, attempts, or threats of serious violent behavior within the last 48 months. An individual

under this subdivision is only eligible to receive assisted outpatient treatment under Section 433 or 469a.]

ARGUMENTS:

For:

Currently, the Michigan Court Rules do not suppress a petition alleging a person to be in need of mental health treatment, although it is estimated that about half the courts in the state do not make the petitions for involuntary hospitalization, or the clinical certificates required to accompany the petition, accessible to the general public. The bill would create consistency across the state by restricting access only to authorized persons. For instance, law enforcement would still be notified for purposes of inclusion in the Law Enforcement Information Network (LEIN) that a person was ordered by a court to be hospitalized involuntarily for mental health treatment.

The stigma of mental illness is well known. Even with successful treatments available that can restore many individuals to full mental health or enable them to successfully manage a mental illness, many struggle to find appropriate employment, housing, or to be accepted by society and be accorded the same rights and opportunities as anyone else. Reportedly, some who at one time were under a court order of involuntary hospitalization, also known as "civil commitment", have found themselves passed over for employment or promotions at work because someone has looked up the petition. Even court employees admit that these petitions can be filled with hearsay (rumors and allegations that cannot be substantiated, like secondhand statements). For others, a petition may have been filed by a well-meaning relative, friend, or even police officer when a person was momentarily despondent over a death, job loss, or divorce and the filer was concerned the person may be suicidal. Thus, the person may not even have had a mental illness, but been reacting to a specific, and overwhelming, sudden change in circumstance. Regardless of the reason a petition was filed, the information contained in it and in the clinical certificate should be treated as confidential health information.

Response:

Though a good start, the bill is not ready in its current form. According to some mental health advocates, the exceptions as to who would be authorized to access the information in the petitions and clinical certifications may need a little tweaking to ensure access by the subject's guardian or caregiver, to someone considering filing a petition for court-ordered outpatient treatment under provisions of Kevin's Law, to an heir or personal representative if the person is deceased, and to law enforcement agencies as necessary for them to fulfill legal obligations.

Moreover, the subject of a petition should be asked if they wish to identify anyone to whom the information could be released (such as current or future treatment providers), as well as asked if they have a psychiatric advance directive, patient advocate, or durable power of attorney. According to the advocates, these are steps that may be helpful in recordkeeping, current and future behavioral health treatment efforts, and also help a person who is the subject of a petition in planning for future decisions related to treatment preferences.

Against:

Some feel public access to involuntary hospitalization petitions is a protection from abuse of the civil commitment process and should be maintained. To do otherwise, they say, is un-American and akin to practices practiced by other countries as a way to silence government critics and used historically to remove populations deemed as "undesirable" from society. At one point in time in the U.S., reportedly, it was not uncommon (and acceptable) for husbands to use involuntary commitment to dispose of a wife they no longer wanted.

Being forced into mental health treatment against one's will is not inhumane if the person is so ill as to not recognize his or her own need for assistance or presents a danger to self or to others. However, the mechanism of involuntary hospitalization was prone to abuse in the past, and the possibility of abuse even today still exists. Therefore, some believe that public access to information contained in the petitions and clinical certificates can—in some circumstances—be protective, both in preventing fraudulent uses and in rescuing a victim of a sham petition.

POSITIONS:

NAMI-Michigan supports the bill. (10-22-15)

Mental Health Association in Michigan indicated support for the bill. (10-13-15)

Michigan Partners in Crisis submitted written testimony conceptually supporting the bill. (10-13-15)

A representative of the Michigan Process Servers Alliance testified in opposition to the bill. (10-13-15)

Michigan Probate Judges Association indicated opposition to the bill. (10-13-15)

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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.