



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



BILL ANALYSIS

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

House Bill 4674 (Substitute H-2 as passed by the House)
Sponsor: Representative Tom Leonard
House Committee: Health Policy
Senate Committee: Health Policy

Date Completed: 12-8-15

CONTENT

The bill would amend the Mental Health Code to revise the conditions under which a person may be ordered into involuntary mental health treatment. Specifically, the bill would do the following:

- **Revise the definitions of "person requiring treatment" and "emergency situation" to refer to a substantial risk of harm presented by the impaired judgment of a person with mental illness, rather than a risk of physical harm presented by the person's behavior.**
- **Refer to a person who is unlikely to voluntarily participate in or adhere to treatment, rather than a person who is currently noncompliant with recommended treatment, in the definition of "person requiring treatment"; and specify that such a person would be eligible only for court-ordered assisted outpatient treatment (AOT), not court-ordered hospitalization.**
- **Delete provisions related to the filing of a petition asserting that a person meets the criteria for AOT, and extend to AOT the provisions that apply to a petition asserting that an individual is a person requiring treatment, with several exceptions.**
- **Extend certain provisions regarding court-ordered treatment to treatment consisting of combined hospitalization and AOT.**
- **Require the State Court Administrative Office to prescribe forms used for court proceedings.**
- **Require a community mental health services program (CMHSP) to determine an individual's eligibility for a private health insurer, Medicaid, or Medicare and bill any of those entities before spending money from the State General Fund for providing treatment and services under the Code to that individual.**
- **Delete a requirement that the Department of Health and Human Services (DHHS) make available on its website an annual report concerning AOT services in Michigan.**

The bill would take effect 90 days after it was enacted or on April 1, 2016, whichever was later.

"Person Requiring Treatment"

Chapter 4 of the Code provides for civil admission and discharge procedures, including court-ordered involuntary treatment for a person requiring treatment. "Person requiring treatment" includes the following:

- An individual who has mental illness, and who as a result of that 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 substantially support that expectation.
- An individual who has mental illness, and who as a result of that 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 for the individual to avoid serious harm in the near future, and who has demonstrated that inability by failing to attend to those needs.

"Person requiring treatment" also includes an individual who has 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 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 would instead refer to an individual whose judgment is so impaired by mental illness that he or she is unable to understand the 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 also would delete a provision under which such a person must receive involuntary mental health treatment initially only under Sections 434 through 438, which contain provisions related to the filing of a petition asserting that an individual is a person requiring treatment and a court-ordered examination of a petition subject.

Additionally, "person requiring treatment" includes 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 in the individual's committing one or more acts, attempts, or threats of serious violent behavior within the last 48 months. The bill would refer to an individual who is unlikely to voluntarily participate in or adhere to treatment, and would delete the requirement that the person be currently noncompliant with recommended treatment. The Code specifies that such an individual is eligible only to receive assisted outpatient treatment.

"Assisted outpatient treatment", or "AOT", means categories of outpatient services ordered by a court under certain sections of the Code. The term includes case management services to provide care coordination, and 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 use disorder treatment and counseling, and periodic tests for the presence of alcohol or illegal drugs for an individual with a history of alcohol abuse or substance use disorder; supervision of living arrangements; and 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 him or her in living and functioning in the community or to attempt to prevent a relapse or deterioration that reasonably might be predicted to result in suicide, the need for hospitalization, or serious violent behavior. The medical review and direction included in an AOT treatment plan must be provided under the supervision of a psychiatrist.

Under the bill, case management services would be a mandatory element of AOT.

Petition: Person Requiring Treatment

Under Section 433, any individual who is at least 18 years old may file with the court a petition that asserts that an individual meets the Code's criteria for AOT. The petition must contain the facts that are the basis for the assertion and, if known, the names and addresses of any

witnesses to the facts, the mental health professional currently providing care to the individual who is the subject of the petition, and the person's nearest relative, guardian, or friend. Upon receiving the petition, the court must inform the subject of the petition and the applicable CMHSP that the court will hold a hearing to determine whether the individual meets the criteria for AOT. If the court verifies at the hearing that the person does meet the criteria and he or she 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 bill would repeal Section 433.

The bill provides that a petition filed under Section 434 could assert that the subject of the petition should receive AOT. Under Section 434, any individual who is at least 18 years old may file with the court a petition that asserts that an individual is a person requiring treatment. Except as otherwise provided, the petition must be accompanied by a physician's or licensed psychologist's clinical certificate executed within 72 hours before the petition is filed and after personal examination of the individual.

The bill would exempt from the clinical certificate requirement a petition that did not seek hospitalization but only requested that the subject receive AOT.

Except as otherwise provided, 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. If the notice is not withdrawn and the hospital director determines that the patient is a person requiring treatment and should remain in the hospital, the hospital director or other suitable person must file an application with the court within three days after receiving the patient's notice of termination. The application must be accompanied by two clinical certificates, one executed by a psychiatrist and one executed by either a physician or licensed psychologist. If an application is filed, the hospital may continue hospitalization of the patient pending court hearings convened pursuant to the Code. The bill would refer to a petition that complied with Section 434 in these provisions rather than an application.

A hospital designated by the DHHS 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. The bill would refer to a petition rather than an application in this provision. Additionally, the bill specifies that the petition would have to be executed not more than 10 days before presentation of the individual to the hospital. The petition would have to be filed by someone who was at least 18 years old and contain the basis for the assertion that the individual was a person requiring treatment and, if known, the names and addresses of any witnesses and the individual's nearest relative, guardian, or friend.

Under certain circumstances, a peace officer may take an individual into protective custody and transport him or her to a preadmission screening unit or hospital for examination, mental health intervention services, or hospitalization. Upon delivery of an application and a physician's or licensed psychologist's clinical certificate, the officer is required to take the individual named in the petition into protective custody and transport him or her immediately to the preadmission screening unit or hospital designated by the CMHSP for hospitalization. The bill would refer to a petition rather than an application.

The Code requires each CMHSP to designate hospitals with which it has a contract to receive and detain individuals, and requires the DHHS to designate any additional hospitals that are required to receive and detain individuals presented for examination. A designated hospital must receive and detain an individual presented for examination for not more than 24 hours. During that time, the individual must be examined by a physician or a licensed psychologist.

Under the bill, this requirement would apply unless a clinical certificate had already been presented to the hospital.

Under Section 428, if a person who executed an application for an individual's hospitalization is unable after reasonable effort to secure an examination of the individual by a physician or psychologist, the application may be presented to the court. If the court is satisfied that the application is reasonable and in full compliance with applicable provisions of the Code, and that a reasonable effort was made to secure an examination, the court may order the individual to be examined at a designated preadmission screening unit. If the court considers it necessary, the court also may order a peace officer to take the person into protective custody and transport him or her immediately to a preadmission screening unit for the examination and possible referral on to the hospital. The bill would repeal Section 428.

Court Hearings

The Code contains a number of provisions that govern court hearings convened under the authority of Chapter 4. These include requirements that the court fix a date for every convened hearing, and that a hearing be convened within seven days after the court receives any of the following:

- An application for hospitalization (which serves as a petition for a determination that an individual is a person requiring treatment), a clinical certificate executed by a physician or licensed psychologist, and a clinical certificate executed by a psychiatrist.
- A petition for a determination that an individual is a person requiring treatment, a clinical certificate executed by a physician or psychologist, and a clinical certificate executed by a psychiatrist.
- A petition for a determination that an individual continues to be a person requiring treatment and a clinical certificate executed by a psychiatrist.
- A petition for discharge filed in objection to a periodic review report concluding that an individual requires continuing involuntary mental health treatment.
- A demand or notification that a hearing that has been temporarily deferred be convened.

The bill would eliminate the reference to an application for hospitalization and the related clinical certificates. The bill also would repeal Sections 424 and 428, which require an application for hospitalization to contain an assertion that the individual is a person requiring treatment, and allow a court to order an individual to be examined by a preadmission screening unit if the person who executed the application is unable to secure an examination.

Additionally, the bill would create an exception to the seven-day requirement if a petition sought AOT but not hospitalization. In that case, the bill would require the hearing to be convened within 28 days after the petition was filed; however, if the petition were filed while the subject was an inpatient at a psychiatric hospital, the seven-day deadline would apply.

Under Chapter 4, within 72 hours after the petition and clinical certificates have been filed with the court, the hospitalized subject must meet with legal counsel, a treatment team member assigned by the hospital director, a person assigned by the executive director of the responsible CMHSP, and, if possible, a person designated by the subject of the petition, in order to be informed of the proposed plan of treatment both in the hospital and in the community as an alternative to hospitalization, the nature and possible consequences of commitment procedures, and the right to request that the hearing be temporarily deferred. The bill would refer to a person assigned by the executive director of the CMHSP or other program as designated by the DHHS.

Chapter 4 provides that every individual who is the subject of a petition is entitled to be represented by legal counsel. Legal counsel for the subject of a petition who is hospitalized pending the court hearing must consult in person with the individual within 72 hours after the

petition and two clinical certificates have been filed with the court. The bill specifies that counsel would have to meet with the petition subject *for the first time* within the 72-hour time frame.

The bill would allow the subject of a petition to stipulate to the entry of any order for treatment, after consultation with counsel.

Under the bill, the following provisions that apply generally to a court hearing convened under Chapter 4 would not apply in the case of a petition seeking only AOT:

- A requirement that within four days after the court receives the documents regarding a petition for a determination that an individual is a person requiring treatment, the court give the subject of the petition a copy of the petition and each executed clinical certificate, as well as notice of the right 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.
- A requirement that the court order a CMHSP or other public or private agency or individual to prepare a report assessing the current availability and appropriateness for the individual of alternatives to hospitalization.

Additionally, the bill would exempt a petition seeking only AOT from application of provisions regarding the subject of a petition who is hospitalized pending the hearing.

Under Chapter 4, 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 in person or by written deposition at the hearing. The bill would create an exception to this provision for a petition seeking AOT only that was not accompanied by, or that was not subsequently supplemented by, a psychiatrist's clinical certificate. In that case, an individual could not be found to require treatment unless at least one physician or licensed psychologist *and* one psychiatrist who had personally examined him or her testified. The required examinations for an AOT petition would have to be arranged by the court and the local CMHSP or other entity designated by the DHHS.

Court Order

Under Chapter 4, if the court finds in response to a petition that an individual is a person requiring treatment, the court must do one of the following:

- Order the individual hospitalized in a private or Veterans Administration hospital at the request of the individual or his or her family, if private or Federal funds are to be used and if the hospital agrees.
- Order the individual to undergo a program of treatment that is an alternative to hospitalization and that is recommended by the CMHSP.
- Order the individual to undergo a program of combined hospitalization and alternative treatment as recommended by the CMHSP.

The bill would refer to a CMHSP or other entity as designated by the DHHS. With regard to the last option, the bill would refer to a program of combined hospitalization and alternative treatment, or combined hospitalization and AOT.

Currently, if the court orders AOT as the alternative to hospitalization, the order must require the individual to receive AOT through a CMHSP or other publicly funded entity necessary for fulfillment of the AOT plan. The bill would delete this provision. Under the bill, if an individual were found to be a person requiring treatment, the court could order him or her to receive treatment through a CMHSP, or other DHHS-designated entity, capable of providing the

necessary treatment and services to assist the individual to live and function in the community as specified in the order.

Currently, the order for AOT must include case management services and may include one or more of the following:

- Medication.
- Blood or urinalysis tests to determine compliance with prescribed medication.
- Individual or group therapy.
- 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 and for whom that testing is necessary to assist the court in ordering treatment designed to prevent deterioration.
- Any other services prescribed to treat the individual's mental illness and either to assist him or her in living and functioning in the community or to help prevent a relapse or deterioration that reasonably could be predicted to result in suicide or the need for hospitalization.

Under the bill, the court would be permitted to include case management services and any of those listed above. The bill also would refer to blood or urinalysis tests to determine "compliance with or effectiveness of prescribed medication".

Before ordering a course of treatment for an individual found to be a person requiring treatment, the court must review a report on alternatives to hospitalization prepared within 15 days before the court issues the order. Under the bill, this requirement would not apply in the case of a petition seeking AOT only.

Combined Treatment

Chapter 4 prescribes procedures for the release from a hospital to an alternative treatment program of an individual who is subject to a combined order of hospitalization and alternative treatment, as well as appeal procedures in the case of a disagreement between the hospital and the director of the alternative program or CMHSP regarding the decision to release the individual. Additionally, Chapter 4 prescribes the conditions for use of hospitalization during the period of an order of combined hospitalization and alternative treatment. Under the bill, these provisions also would apply to an individual subject to a combined order of hospitalization and AOT.

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

- That the individual be taken to the preadmission screening unit established by the CMHSP serving the community in which the individual resides.
- That the individual be hospitalized for up to 10 days.
- Upon recommendation by the applicable CMHSP, that the individual be hospitalized for more than 10 days, but not longer than the duration of the order for AOT, 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 he or she may return to AOT before the order expires. An individual hospitalized without a hearing may object to the hospitalization according to procedures prescribed in Chapter 4.

Under the bill, all of these provisions also would apply in the case of an order for a combination of hospitalization and AOT.

AOT Services Report

The bill would repeal Section 116a, which requires the DHHS 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, as well as the available cost and benefit projections concerning AOT in Michigan. The report also must include specified information regarding petitions filed with the court asserting that an individual meets the Code's criteria for AOT.

"Emergency Situation"

The Code allows or requires certain actions to be taken in an emergency situation, as described below. "Emergency situation" means 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:

- The individual reasonably can be expected within the near future to physically injure himself, herself, or another person, either intentionally or unintentionally.
- 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 might lead in the near future to harm to the individual or to another person.
- The individual's judgment is so impaired that he or she is unable to understand the need for treatment and, in the opinion of a mental health professional, his or her continued behavior as a result of the mental illness, developmental disability, or emotional disturbance reasonably can be expected in the near future to result in physical harm to the individual or to another person.

The bill would delete the last criterion, and instead would refer to a situation in which the individual has mental illness that has impaired his or her judgment so that he or she 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.

At a hearing pertaining to guardianship of a person with a developmentally disability, the court may designate one or more standby guardians whose appointment becomes effective without further proceedings immediately upon the death, incapacity, or resignation of an initially appointed guardian. In an emergency situation and in the absence and unavailability of the initially appointed guardian, the standby guardian temporarily may assume the powers and duties of the initially appointed guardian.

If an applicant for community mental health services has been denied services, the application, his or her appointed guardian, or, if the applicant is a minor, his or her parent may request a second opinion of the CMHSP's executive director, who must secure the second opinion from a physician, licensed psychologist, registered professional nurse, or master's level social worker or psychologist. If the individual providing the second opinion determines that the applicant has a serious mental illness, serious emotional disturbance, or

developmental disability, or is experiencing an emergency situation or urgent situation, the CMHSP must direct services to the applicant.

MCL 330.1100a et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have an indeterminate, but likely minor, negative fiscal impact on the Department of Health and Human Services and local units of government. While the bill would allow for the use of assisted outpatient treatment as an alternative to hospitalization, it would not mandate the use of AOT. Thus, it would be left to the individual community mental health services program to determine its level of investment in assisted outpatient treatment, if any. The Code requires the state to pay 90% of the annual net cost of a CMHSP, subject to appropriation by the Legislature. However, counties may provide funding to their local CMHSP through the use of millages or the county general fund. Therefore, a CMHSP choosing to provide assisted outpatient treatment would not present an increased cost to the State, but could result in increased costs for local units of government depending on whether the investment was financed by reprioritizing current funding or levying additional local resources.

The bill would expand the definition of a person requiring treatment as well as what constitutes an emergency situation, which would result in an expansion of the population of people meeting the requirements for court-ordered mental health treatment. As with any expansion of a population eligible to receive services, this would result in increased costs for State and local government.

Under the bill, the DHHS and the State Court Administrative Office would be required to update forms to reflect changes made to assisted outpatient treatment and mental health related hospitalizations resulting from a court order. These costs would be borne by existing resources and would not result in increased costs to the State.

Currently, CMHSPs that contract with the Department are required to exhaust all other third party options before using State dollars to pay for services. The bill would codify this practice for all CMHSPs, leading to an increase in administrative costs. These increased efforts should result in higher third party insurance collections, which could partially or fully offset the incurred administrative costs, depending on the current level of collections.

The bill also could lead to an increase in petitions to probate courts asserting that an individual requires mental health treatment. Any increase in petitions could place incremental resource demands on local courts.

Fiscal Analyst: Ellyn Ackerman
Ryan Bergen

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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.