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BILL



ANALYSIS

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House Bill 5810 (Substitute H-4 as passed by the House)
Sponsor: Representative Hank Vaupel
House Committee: Health Policy
Senate Committee: Health Policy

Date Completed: 12-11-18

CONTENT

The bill would amend the Mental Health Code to do the following:

- **Modify all references to "alternative treatment" to "assisted outpatient treatment".**
- **Revise the definition of "person requiring treatment".**
- **Require a court order for a peace officer to transport an individual to a court ordered examination to be executed within 10 days of its entry.**
- **Revise the number of medical professions required to testify to find an individual to be a person requiring treatment.**
- **Revise the allowed duration of a deferral period for a hearing to determine if an individual were a person requiring treatment.**
- **Require a psychiatrist to supervise the preparation and implementation of an assisted outpatient treatment plan.**
- **Revise the duration of time allowed for initial and subsequent court orders of treatment for an individual found to be a person requiring treatment.**
- **Require the decision to release an individual from assisted outpatient treatment program to be a clinical decision made by a psychiatrist**

The bill would take effect 90 days after its enactment.

The bill would eliminate all references to "alternative treatment" and replace the references with "assisted outpatient treatment"

Under the Code, "assisted outpatient services (AOT)" means the categories of outpatient services ordered by the court under the Code. Assisted outpatient treatment may include, among other things, case management services to provide care coordination.

Under the bill, AOT could include a case management plan.

Definitions

The Code defines "emergency situation" as 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 a list of criteria applies. One criterion is that 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 significant physical or mental harm

to the individual in the near future or presents a substantial risk of significant physical harm to others in the near future.

Under the bill, this criterion would be that the individual had mental illness that had impaired his or her judgement so that the individual was unable to understand his or her need for treatment and presented a risk of harm.

Under the Code, "person requiring treatment" means, among other things, 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 significant physical or mental harm to the individual in the near future or presents a substantial risk of physical harm to others in the near future. The term also means 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 voluntarily participate in or adhere to treatment that has been determined 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 circumstance is only eligible to receive assisted outpatient treatment.

Under the bill, that term would mean a person who had mental illness, whose judgement was so impaired by that mental illness that he or she is unable to understand his or her need for treatment, and whose impaired judgment presented a substantial risk of harm.

Instead, that term also would mean an individual who had mental illness, whose understanding of the need for treatment had caused him or her to demonstrate an unwillingness to voluntarily participate in or adhere to treatment that, on the basis of competent clinical opinion, was necessary to prevent a relapse or harmful deterioration of his or her condition, and whose unwillingness to voluntarily participate in or adhere to treatment presented a substantial current or future risk of significant physical or mental harm to the individual or physical harm to others.

Additionally, if there were an increase in the number of persons requiring treatment under the bill's revised definition of "person requiring treatment", after the bill's effective date the State would have to pay all of the additional costs associated with the increase.

Initial Court Orders

Under the Code, if it appears to the court that an individual will not comply with an order of examination under the Code, the court may order a peace officer to take the individual into protective custody and transport him or her to a preadmission screening unit or hospital designated by the community mental health services program or to another suitable place for the ordered examination or examinations.

The bill would require the court order to be executed within 10 days after the court entered it. If the order were not executed within that time period, the law enforcement agency would have to report to the court the reason the order was not executed within the prescribed time period.

The Code also allows the court to order an individual hospitalized if it appears that the individual requires immediate assessment because the individual presents a substantial risk of significant physical or mental harm to himself or herself in the near future or presents a

substantial risk of significant physical harm to others in the near future. The bill would allow the court to order an individual hospitalized if it appeared that the individual required immediate assessment because the individual presented a substantial risk of harm.

Testimony Requirements

The Code provides that an individual may not be found to require treatment unless at least one physician or licensed psychologist and one psychiatrist who have personally examined that individual testify in person or by written deposition at the hearing. The bill would require at least one physician, licensed psychologist, or psychiatrist who had personally examined that individual to testify in person or by written deposition at the hearing.

Additionally, the requirement for testimony given in person or by written deposition could be waived by the subject of the petition, and in that case, a clinical certificate completed by a physician, licensed psychologist, or psychiatrist, would have to be presented to the court before or at the initial hearing.

Subject of a Petition

Under the Code, any individual 18 years of age or over may file with the court a petition that asserts that an individual is a person requiring treatment. The subject of a petition has certain rights in the court process and during hospitalization. The subject of a petition who is hospitalized pending a court hearing, within 72 hours after the petition and clinical certificates have been filed with the court, must meet with certain medical and legal personnel to be informed of, among other things, the right to request that the hearing be temporarily deferred, with a continuing right to demand a hearing during the deferral period. The deferral period must be 60 days if the individual chooses to remain hospitalized, or 90 days if the individual chooses alternative treatment or a combination of hospitalization and alternative treatment.

The bill would increase the 90-day deferral period to 180 days, if the individual chose alternative treatment (changed to outpatient treatment by bill) or a combination of hospitalization and alternative treatment.

During this time, the Code provides that the individual must provide stipulation that the he or she agrees to remain hospitalized, and to accept treatment as may be prescribed for this period or to accept and follow the proposed plan of treatment under the Code. The bill would allow the individual to accept and follow the proposed plan for outpatient treatment during this time.

Under the Code, if an individual is found to be a person requiring treatment, the court must do one of the following:

- Order the individual hospitalized in a hospital recommended by the community mental health services program or other entity as designated by the Department.
- 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 utilized 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 community mental health services program or other entity as designated by the Department.
- Order the individual to undergo a program of combined hospitalization and alternative treatment or hospitalization and assisted outpatient treatment, as recommended by the

community mental health services program or other entity as designated by the Department.

- Order the individual to receive assisted outpatient treatment through a community mental health services program, or other entity as designated by the Department, capable of providing the necessary treatment and services to assist the individual to live and function in the community as specified in the order.

The bill would eliminate the provision that allowed the court to order the individual to undergo a program of treatment that were an alternative to hospitalization and that were recommended by the community mental health services program or other entity as designated by the Department.

Additionally, the bill would require a psychiatrist, in developing an assisted outpatient treatment plan, to supervise the preparation and implementation of the assisted outpatient treatment plan. The plan would have to be completed within 30 days after the entry of the court's order of assisted outpatient treatment, and a copy would have to be forwarded to the probate court within three days after completing the plan. The plan would have to be maintained in the court file.

Court Orders of Treatment

Under the Code, upon filing of a petition and a finding that an individual is a person requiring treatment, the court must issue an initial order of involuntary mental health treatment that must not exceed 90 days for an initial order of alternative treatment, or 90 days for a combined hospitalization and alternative treatment with the hospitalization portion not exceeding 60 days. The bill would delete these provisions.

The Code also provides that upon receipt of a petition before the expiration of an initial order and a finding that the individual continues to be a person requiring treatment, the court must issue a second order for involuntary mental health treatment that must be limited in duration as follows:

- A second order of hospitalization may not exceed 90 days.
- A second order of alternative treatment or assisted outpatient treatment may not exceed one year.
- A second order of combined hospitalization and alternative treatment or hospitalization and assisted outpatient treatment may not exceed 1 year. The hospitalization portion of the second order may not exceed 90 days.

The bill would eliminate these circumstances, and specifies instead, that the second order of involuntary mental health treatment could not exceed 90 days.

Additionally, upon the receipt of a petition before the expiration of a second order described above a finding that the individual continues to be a person requiring treatment, the court must issue a continuing order for involuntary mental health treatment that must be limited in duration as follows:

- A continuing order of hospitalization shall not exceed one year.
- A continuing order of alternative treatment or assisted outpatient treatment shall not exceed one year.
- A continuing order of combined hospitalization and alternative treatment or hospitalization and assisted outpatient treatment shall not exceed one year. The hospitalization portion of a continuing order for combined hospitalization and alternative treatment or hospitalization and assisted outpatient treatment shall not exceed 90 days.

The bill also would eliminate these circumstances, and specifies instead, that a continuing order for involuntary mental health treatment could not exceed one year.

Release of an Individual under Order of Treatment

Under the Code, if an individual is subject to a combined order of hospitalization and either alternative treatment or assisted outpatient treatment, the decision to release the individual from the hospital to the alternative treatment program or assisted outpatient treatment program must be a clinical decision made by a psychiatrist designated by the hospital director in consultation with the director of the alternative treatment program or the assisted outpatient treatment program.

The Code also specifies that if the hospital is operated by or under contract with the Department or a community mental health services program and private payment arrangements have not been made, the decision must be made in consultation with the treatment team designated by the executive director of the community mental health services program. The bill would delete this provision.

Instead, if an individual were subject to an order of assisted outpatient treatment, the decision to release the individual from the assisted outpatient treatment program would have to be a clinical decision made by a psychiatrist designated by the director of the assisted outpatient treatment program.

MCL 330.1100a et al.

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

The bill would have an indeterminate negative fiscal impact on the Department of Health and Human Services (DHHS) and no impact on local units of government. Under current law, the Mental Health Code require the State to pay 90% of the annual net cost of a community mental health services program (CMHSP), subject to appropriation by the Legislature (MCL 330.1308). The bill would add Section 308a, which would place all costs resulting from an increase in the number of persons requiring treatment after the effective date of the bill on the State. Because the bill would allow the use of assisted outpatient treatment as an alternative to hospitalization, but would not mandate the use of assisted outpatient treatment, it would be left to the individual CMHSP to determine its level of investment in assisted outpatient treatment, if any. To the extent that this bill would result in an increase in CMHSPs choosing to provide assisted outpatient treatment, it would present an increased cost to the State, but would not result in increased costs for local units of government.

Additionally, 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 assisted outpatient treatment. As with any expansion of a population eligible to receive services, this would result in increased costs for the State. However, due to the addition of Section 308a, all costs would be borne by the State.

Fiscal Analyst: Ellyn Ackerman

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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.