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BILL ANALYSIS

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Senate Bills 1464-1472 (as introduced 11-3-04)  
Sponsor: Senator Bev Hammerstrom (S.B. 1464, 1468, & 1469)  
Senator Gilda Z. Jacobs (S.B. 1465, 1466, & 1467)  
Senator Bruce Patterson (S.B. 1470, 1471, & 1472)  
Committee: Health Policy

Date Completed: 11-3-04

## **CONTENT**

**Senate Bill 1464** would amend 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** would amend the Public Health Code, the Michigan Penal Code, and the Michigan Do-Not-Resuscitate Act, respectively, to change citations to sections of EPIC.

**Senate Bill 1468** would amend the Mental Health Code to revise the definition of "formal voluntary hospitalization".

**Senate Bill 1469** would amend the Mental Health Code to 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.

**Senate Bill 1470** would amend the Mental Health Code to 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.

**Senate Bill 1471** would amend the Mental Health Code to 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 community mental health services program (CMHSP).

**Senate Bill 1472** would amend the Mental Health Code to include a patient advocate for mental health treatment decisions among the people who may execute an application for formal voluntary hospitalization.

Senate Bill 1464 is tie-barred to all of the other bills, and all of the other bills are tie-barred to Senate Bill 1464. Additionally, Senate Bills 1468 through 1472 are tie-barred to each other. The bills are described below in further detail.

### **Senate Bill 1464**

Under the Estates and Protected Individuals Code, a person who is at least 18 years old and of sound mind may designate 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 could designate another person to make mental health treatment decisions for him or her.

“Patient advocate” means an individual designated to exercise powers concerning another individual’s care, custody, and medical treatment or authorized to make an anatomical gift on behalf of another individual, or both. The bill would revise this definition to include an individual designated to exercise powers concerning another individual’s mental health treatment.

Presently, a patient advocate designation must be made part of the patient’s medical record with the patient’s attending physician and, if applicable, the facility where the patient is located. Under the bill, a patient advocate designation would have to 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 was located, or the community mental health services program or hospital that was providing mental health services to the patient.

(Under EPIC, “patient advocate designation” means the written document executed and with the effect of designating another individual as a patient advocate. The bill would define “community mental health services program” as a program operated as a county community mental health agency, a community mental health authority, or a community mental health organization. “Hospital” would mean 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 Mental Health Code.)

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 could not be an employee of the CMHSP or hospital that was providing mental health services to the patient.

Under EPIC, the acceptance of a designation as a patient advocate must include certain statements set forth in the Code. The bill would require the acceptance also to state that a patient could waive his or her right to revoke the patient advocate designation regarding the power to make mental health treatment decisions, and if such a waiver were made, his or her ability to revoke

regarding certain treatment would be delayed for 30 days after he or she communicated his or her intent to revoke.

The bill would add 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 under a designation in which the patient had waived his or her right to revoke could not continue for more than 30 consecutive days. The waiver would 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.)

Proposed Section 5515 also would allow a patient advocate to exercise the power to make mental health treatment decisions only if a physician and a mental health practitioner both certified in writing, after examination of the patient, that the patient was unable to give informed consent to mental health treatment. In the document containing the patient advocate designation, the patient could designate a physician and/or a mental health practitioner to make this determination. If the designated physician or mental health practitioner were unable or unwilling to conduct the examination and make the determination within a reasonable time, the examination and determination would have to be made by another physician or mental health practitioner.

Under the Code, an individual designated as a patient advocate has specific authority, rights, responsibilities, and limitations. The bill would add that, with regard to mental health treatment, the patient advocate could consent only to the forced administration of medication or to inpatient hospitalization to which the patient had expressed in a clear and convincing manner that the patient advocate was authorized to consent, other than hospitalization as a formal voluntary patient under Section 415 of the Mental Health Code. (Under that section, 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, or limited guardian with authority to admit, applies and the hospital director considers the patient to be clinically suitable for that form of hospitalization. Section 419 would be amended by Senate Bill 1472.)

Under the bill, a mental health professional who provided mental health treatment to a patient would have to comply with the patient's desires as expressed in the patient advocate designation. The mental health professional would not be bound to follow an expressed desire if any of the following applied:

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

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

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

#### **Senate Bills 1465, 1466, and 1467**

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

#### **Senate Bill 1468**

The Mental Health Code defines "formal voluntary hospitalization" as hospitalization of an individual based on both his or her

execution of an application for voluntary hospitalization, and the hospital director's determination that the individual is clinically suitable for voluntary hospitalization. The bill would refer to the execution of an application for voluntary hospitalization by the individual or by a patient advocate designated under EPIC.

#### **Senate Bill 1469**

The bill would amend 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. Currently, the patient and his or her guardian or nearest relative must be notified at least seven days before any transfer, unless the transfer 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 the transfer. Under the bill, this provision also would apply if the patient advocate objected to the transfer.

#### **Senate Bill 1470**

The Mental Health Code requires each CMSHP 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. A preadmission screening unit must assess individuals who seek authorization for admission into hospitals operated by the DCH or under contract with the CMHSP. If the individual is clinically suitable for hospitalization, the preadmission screening unit must authorize voluntary admission to the hospital. Under the bill, a preadmission screening unit would have to assess "an individual being considered for admission" into a hospital, rather than individuals who seek authorization for admission.

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 could request a second opinion.

### **Senate Bill 1471**

Under the Mental Health Code, an individual seeking 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 the CMHSP preadmission screening unit. The bill would refer to an individual "who requests, applies for, or assents to" informal or formal voluntary admission, rather than an individual seeking admission.

### **Senate Bill 1472**

The bill would amend 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. Currently, only an individual or, with his or her assent, the individual's full guardian, or his or her limited guardian with authority to admit, may execute an application for hospitalization.

MCL 700.1106 et al. (S.B. 1464)  
MCL 333.5653 & 333.5654 (S.B. 1465)  
MCL 750.145n (S.B. 1466)  
MCL 333.1052 (S.B. 1467)  
MCL 330.1400 (S.B. 1468)  
MCL 330.1407 (S.B. 1469)  
MCL 330.1409 (S.B. 1470)  
MCL 330.1410 (S.B. 1471)  
MCL 330.1415 (S.B. 1472)

Legislative Analyst: Julie Koval

### **FISCAL IMPACT**

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

Fiscal Analyst: Steve Angelotti

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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.