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FISCAL IMPACT REPORT

ORIGINAL DATE 02/10/07
 LAST UPDATED 02/26/07 HB 609/HJCS

SPONSOR HJCS

SHORT TITLE Mandatory Community Treatment Act SB _____

ANALYST Hanika Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$.1 (see narrative)			Recurring	General fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of Bill

The House Judiciary Committee Substitute enacts the “Mandated Community Treatment Act” allowing a court to order outpatient services for a person over age 18 suffering from a mental illness that has refused voluntary mental health treatment. The bill allows specified persons to file a petition for an order authorizing mandated community treatment and describes the required contents of the petition and hearing.

The bill provides definitions, to include “brain injury” from traumatic or acquired origins; and, “capacity” to include the ability to make informed mental health decisions.

To be a candidate for mandated community treatment, the individual must:

- lack capacity;
- be 18 years of age or older;
- be suffering from a mental illness;
- have refused voluntary mental health treatment or is unlikely to participate voluntarily;
- be in need of mandated treatment to prevent a relapse or deterioration that will likely result in serious harm to self or others;
- likely benefit from mandated community treatment; and
- be someone whose lack of compliance with treatment for mental illness has:
 - at least twice within the last forty-eight months been a significant factor in necessitating hospitalization or services in a mental health unit or correctional facility;
 - resulted in one or more acts of serious violent behavior toward self or others or serious threats of, or attempts at, serious physical harm to self or others within the last forty-eight months;

- resulted in the person being hospitalized or incarcerated for at least six months for acts other than petty misdemeanors and the person is to be discharged or released within the next thirty days; or
- resulted in the person being hospitalized or incarcerated for a period of six months or more and the person was discharged or released within the past sixty days.

The Act specifies who may petition for an order of mandatory community treatment, what that petition must consist of, and what documents must accompany such a petition. It specifies what testimony must be provided by the petitioner, including requirements for a physician testifying on the petitioner's behalf and requires a detailed written treatment plan at the time of the hearing. The Act outlines how the disposition of the case shall proceed, including evidence-based services and alternative health practices that may be included in the treatment plan if the court issues an order for mandated treatment. The Act expressly forbids electroconvulsive therapy to be included in any treatment plan. The Act makes provisions for staying, extending, vacating, or modifying an order.

The Act addresses the respondent's rights, including the right to be treated with respect and dignity and provided with as much autonomy as possible; the right to have the judge consider valid advance directives (provides for exceptions if such treatment is refused in the directive; is infeasible, ineffective or unavailable; or, conflicts with other applicable law) or the opinion of a designated mental health care decision maker; the right of the respondent to request and present a second opinion and alternative treatment plan using private or public resources; the right to refuse treatment; the right to testify about why previously offered treatment was refused; the right to file a complaint regarding the treatment provided pursuant to the plan; and the right to request a court extension to provide time for the respondent's attorney to review any proposed mandated treatment plan.

The Act stipulates what constitutes failure to comply with a mandatory community treatment order and actions to be taken in the event an individual fails to comply.

The Act provides for holding all records or information pertaining to the petition confidential and closed to the public with the exception of parties recognized by the court as having a legitimate interest in the case, and penalties if that information were to be made public.

The Act provides criminal and civil actions for making a false statement or providing false information or testimony in a petition or hearing under the provisions of the Act.

FISCAL IMPLICATIONS

HB 609 does not include an appropriation for the operation and administration of the services required under the Act. A separate appropriation bill (HB 835) this session requests \$5 million for this and other outpatient mental health services.

There will be an administrative impact on HSD to implement a study and provide educational materials, but that impact is expected to be absorbed within available resources.

No comprehensive cost studies have been conducted in states with similar legislation. Fiscal implications for state agencies are dependent on the number of petitions and the number of persons ultimately found subject to this Act. These numbers have been estimated differently by

opponents and proponents of this bill and are unknown at this time.

HSD/MAD report Medicaid provisions and private insurance requirements may not authorize a hospital to bill Medicaid for a 72-hour hold if the assessment shows no dangerousness meeting the inpatient civil commitment criteria; and, the assessment is primarily for the purpose of establishing a mandated community treatment order. Other federal block grant dollars may not be used for inpatient services. These services will have to be funded through available private insurance, self-pay, or state general fund dollars.

CD believes this bill could reduce the prison population and probation/parole caseloads, to at least a minimal degree, by diverting individuals with mental illnesses (who would otherwise commit crimes) into treatment. It could provide a significant alternative to prison/incarceration.

SIGNIFICANT ISSUES

The AGO reports that “Mandatory Community Treatment” was conceived as a less restrictive alternative to involuntary hospitalization for people at risk of being dangerous or gravely disabled without treatment. It arose as a recognition by the courts that noncompliance with treatment was a common cause of repeated involuntary hospitalizations and a barrier to less restrictive treatment alternatives. By using the moral authority of the court, outpatient commitment was envisioned as a means to reduce relapse, reduce involuntary hospitalizations, and improve the effectiveness of out-patient care by improving treatment adherence.

In 1999, New York State enacted legislation that provides for assisted outpatient treatment for certain people with mental illness who, in view of their treatment history and present circumstances, are unlikely to survive safely in the community without supervision. This law is commonly referred to as “Kendra’s Law” and was named after Kendra Webdale, a young woman who died in January 1999 after being pushed in front of a New York City subway train by a person who was not receiving treatment for his mental illness.

The Albuquerque City Council adopted a version of “Kendra’s Law” in response to the August, 2005, shooting deaths of five people by a man who has a diagnosis of schizophrenia and was not taking his medication. State District Judge Valerie Huling overturned Albuquerque's version of Kendra's Law and ruled that it conflicted with state statutes prohibiting forced medication for people capable of giving informed consent. The Judge ruled the ordinance "exceeds Albuquerque's exercise of municipal power".

Forty two other states have enacted laws similar to this bill.

PERFORMANCE IMPLICATIONS

The Attorney General’s Office has not commented on this substitute bill and; if concerns raised in the original bill were addressed adequately.

ADMINISTRATIVE IMPLICATIONS

The Act requires HSD to develop educational and training materials and to make these available to judicial staff, providers, law enforcement, and the general public; and, five years after the bills’ enactment conduct an analysis of the Act to be reported to the appropriate interim

legislative committee no later than September 1, 2013. The Act also provides for additional annual data collection and reporting requirements.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 835, which requests \$5 million for implementation and operation expenses for mandated community treatment and operating expenses for other outpatient mental health treatment programs for FY08.

OTHER SUBSTANTIVE ISSUES

HPC reports that The Interagency Behavioral Health Collaborative held several public meetings to discuss in detail what elements to include in the language of a proposed law regarding respondents' rights, criteria and process clarification, and evaluation and sunset clauses. This bill appears to have included almost all of the suggestions that were adopted by the Collaborative in 2006.

ALTERNATIVES

HSD/MAD suggests an alternative being funding of the treatment guardian program that provides treatment guardians for individuals unable to make treatment decisions. Some believe that this is too cumbersome a process to deal with situations in which individuals in the community need quick intervention to prevent deterioration of an individual's condition and possible harm to others.

Another alternative proposed by HSD/MAD is to aggressively implement the psychiatric advanced directive (PAD) law passed last session to determine if allowing persons to indicate while they are capable of making a decision, what treatment they want to occur during a crisis. The impact, enforcement and availability of PADs once executed are not yet clear in states or programs that have aggressively implemented the use of such documents. PADs should be aggressively implemented, but it is unclear what the impact of such documents will have on the individuals who might be subject to mandated community treatment. HB 609 requires the court to consider any existing and valid PAD in determining the treatment to which the respondent would be subject.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Individuals who may soon represent a threat to others due to mental illness and who refuse to accept treatment may still not be treated until they become an eminent threat to others or until they are subject to other civil commitment or treatment guardian laws.

QUESTIONS

1. Are there sufficient funding sources identified for mandated treatment?
2. What will happen in areas of the state where comprehensive services are not available?

AHO/csd