COMMONWEALTH OF KENTUCKY STATE FISCAL NOTE STATEMENT
LEGISLATIVE RESEARCH COMMISSION
2016 REGULAR SESSION

MEASURE

2016 BR NUMBER **0014** **HOUSE** BILL NUMBER **94**

RESOLUTION NUMBER____ AMENDMENT NUMBER **HCS 1**

SUBJECT/TITLE An ACT relating to court-ordered mental health treatment.

SPONSOR Representative Burch

NOTE SUMMARY

FISCAL ANALYSIS**:** ☒ IMPACT ☐ NO IMPACT ☐ INDETERMINABLE IMPACT

LEVEL(S) OF IMPACT: ☒ STATE ☐ LOCAL ☐ FEDERAL

BUDGET UNIT(S) IMPACT: **CHFS; Education and Workforce Development Cabinet; DPA**

FUND(S) IMPACT: ☒ GENERAL ☐ ROAD ☐ FEDERAL ☐ RESTRICTED AGENCY ____ ☐ OTHER

FISCAL SUMMARY

FISCAL ESTIMATES	2015-2016	2016-2017	2017-2018	ANNUAL IMPACT AT FULL IMPLEMENTATION
REVENUES				
EXPENDITURES	Indeterminable	Indeterminable	Indeterminable	
NET EFFECT	(Indeterminable)	(Indeterminable)	(Indeterminable)	

( ) indicates a decrease/negative

MEASURE'S PURPOSE: The purpose of the bill is to create court-ordered mental health treatment for individuals suffering from a mental health illness.

PROVISIONS/MECHANICS: Amend KRS 202A.081 to require that an attorney is present for a patient agreed order and allow a peer support specialist to be present; require the court to appoint a case management provider recognized by the Cabinet for Heath and Family Services to develop a comprehensive treatment plan, monitor treatment adherence, and report on the person's functioning; require that the case management service or team be available 24/7 and adequately trained; provide that failure to abide by the order may result in rehospitalization provided that the criteria are met, procedures are initiated via affidavit by the case management service or team, and mental health examinations take place at community mental health centers; permit additional orders with due process; require that patient agreed order services are covered by Medicaid; require that courts report such orders to the Kentucky Commission on Services and Supports for Individuals with Mental Illness, Alcohol and Other Drug Abuse Disorders, and Dual Diagnoses; and rename this commitment process a patient agreed order.

Amend KRS 202A.261 to exempt certain hospitals from being required to provide particular services.

Amend KRS 202A.271 to require certain hospitals to be paid for services performed under portions of this Act at the same rates the hospital negotiates for other services.

Create new sections of KRS Chapter 202A to create a process for District Courts to order assisted outpatient mental health treatment; provide for transportation processes for the purposes of a mental health examination; establish eligibility and court proceedings; require a mental health examination and the development of a treatment plan; establish the process for hearings; require the court to appoint a case management team or service to monitor and report on the person under order; authorize 72-hour emergency admission for failure to comply with orders; provide for the right to stay, vacate, or modify orders; provide for a process to change a treatment plan; permit an additional period of treatment to be ordered provided certain criteria are met; require that assisted outpatient treatment services are covered by Medicaid; and name these sections of the bill "Tim's Law."

FISCAL EXPLANATION:

The total cost of this proposed measure is indeterminable because the actual number of cases this proposal will apply to is unknown.

Department of Public Advocacy

According to the Department of Public Advocacy (DPA), the expansion of patient agreed orders and the creation of court-ordered assisted outpatient treatment will increase DPA costs by requiring additional attorneys for the following additional court proceedings:

- At the time of agreement to a patient agreed order (Section 1(1))
- Upon an allegation of failure to comply with patient agreed order (Section 1((9)(a))
- At a hearing for additional period of agreed treatment (Section 1(10)(b))
- At a hearing for court-ordered assisted outpatient treatment (Section 4(6)(b), Section 8(1))
- At hearings scheduled by the court to review compliance (Section 9(1), Section 8(1))
- Upon an allegation of failure to comply with court-ordered treatment (Section 10, Section 8(1))
- Upon patient’s request for stay or modification of order (Section 11(1), Section 8(1))
- Upon petition for additional period of treatment after expiration of order (Section 11(3))

In addition to being present for court on all these occasions, the attorneys will have preparation time, including meeting with the client, in advance of each court appearance.

DPA reported that they were assigned a total of 3,981 KRS Chapter 202A cases. DPA stated that many, if not most, of their 202A clients suffer from schizophrenia and bipolar disorder. DPA posits that the Treatment Advocacy Center estimates that 40-50% of persons with these disorders suffer from anosognosia, which may yield nearly 2,000 total cases impacted by the proposed bill.

DPA advises that the additional cases will require additional attorneys. Each attorney is estimated to cost DPA a total of $66,880 (includes salary and benefits), plus the costs of travel,

office space, and computers. DPA also stated that there will be training costs for attorneys, alternative sentencing workers, and investigators associated with implementation of this legislation as 25 DPA offices do not currently handle 202A cases. While the majority of new cases may appear to be concentrated in specific offices, DPA stated that the language could result in cases arising in any county. Below is a breakdown of the offices that handle the bulk of 202A cases.

Louisville - 1,685 cases
Hopkinsville - 1,353 cases
Lexington – 248 cases
Covington – 270 cases
Hazard – 151 cases
Boone County – 216 cases
Elizabethtown – 29 cases
Newport – 26 cases

DPA believes that the Protection and Advocacy (P&A) Division, an independent Division within DPA, may see an increased number of requests from the public for information, referrals, and technical assistance. Of the current 200 requests, 10% come from persons with mental illness currently placed at one of the state-owned/operated psychiatric hospitals in KY or from a family member of the mentally ill individual. According to DPA, if an expansion of assisted outpatient treatment (AOT), including community-based outpatient treatment, were to occur, P&A may need additional staff to respond to these requests. P&A also provides rights training to individuals with mental illness and other disabilities that may increase if AOT were expanded.

Actual costs to DPA hinge on the number of cases that occur, as well as the increase, if any, in the number of requests to the P&A Division.

Education and Workforce Development Cabinet

Current funding for the Education and Workforce Development Cabinet's Supported Employment services program is not sufficient for all applicants. Therefore, according to federal funding guidelines, Kentucky operates under an Order of Selection whereby individuals who have the most significant disabilities are given first priority. In addition, there are not currently enough providers statewide to serve consumers needing supported employment services. Many counties in Kentucky do not have providers for Supported Employment services or they are limited in what they can offer. General Fund moneys are currently not sufficient to fully leverage federal matching funds, as well. It is unknown how many of the people affected by this bill would actually qualify for Category One, the population with the most significant disabilities. In essence, this bill would simply add new consumers to the unserved and underserved populations unless additional funding is provided.

Cabinet for Health and Family Services

Although there are other possible case management providers under the provisions of the

legislation, there may be an increased cost for the Community Mental Health Centers to provide the additional services and reporting required by this bill. The extent of this additional cost will depend upon the degree to which families and providers choose to file petitions for community-based outpatient treatment, the extent to which judges grant such a request, and the degree to which hospitalizations occur as a result of violation of the patient agreed order. The cost of this treatment will either be borne by Medicaid Managed Care Organizations, since the persons affected by this will most likely be Medicaid eligible, or through the CMHCs as they are required to provide the case management service or team, which is to be available 24 hours a day. How much of the total cost would be medical services that could be covered by Medicaid expansion or private insurance (vs. social and support services that might not be covered by Medicaid or health insurance) is unknown. While part of the discharge planning would include obtaining health insurance coverage, private insurance and Medicaid can only pay for services determined to be medically necessary, which is consistent with the language in Section 1(112) that requires services to be subject to the same medical necessity criteria by the Department for Medicaid Services and its contractors. Medicaid cannot pay for substance abuse treatment services for persons who are not otherwise Medicaid-eligible.

In addition, the legislation requires case management providers to use evidence-based practices. The CMHCs provide evidence-based practices through Assertive Community Treatment (ACT) teams. Each 10 person ACT team is estimated to cost in excess of $1 million per year. An ACT team can serve approximately 20 individuals at any given time, with one team existing per region, although larger urban areas would likely need additional teams. Resources may not currently exist to develop or to expand the ACT teams that would be necessary to serve the individuals who may be court ordered to community-based outpatient treatment.

DATA SOURCE(S): **Department of Public Advocacy; Cabinet Health and Family Services; Workforce Development Cabinet** **PREPARER**: **Zach Ireland, Chuck Truesdell, Miriam Fordham**
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