2015 SENATE HUMAN SERVICES

SCR 4021

2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SCR 4021
2/16/2015
23887

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Donald Mueller

Explanation or reason for introduction of bill/resolution:

A concurrent resolution directing the Legislative Management to study how the institution for mental disease Medicaid reimbursement exclusion impacts this state, including the impact on Medicaid enrollees and on private and public sector providers.

Minutes:

Attach #1: Testimony by Carlotta McCleary

Senator Tim Mathern introduced SCR 4021 to the Senate Human Services Committee. In 1965 there was great controversy whether to pass Medicaid. An amendment to the bill in 1965 stated persons who are in an institution for a mental disease would not be covered by Medicaid. At this time, these were state hospitals. This resolution is to talk about the consequence of the decision in 1965. When someone is between age of 21 and 64 and they are Medicaid eligible, they cannot receive assistance for that care if they are in the institutions, such as state hospital, Stotterd in Grand Forks, Prairie St. Johns in Fargo, Sharehouse, and new organizations that provide care. Persons not receiving eligibility to get that care has a dramatic consequence, not just on the provider but on the individual. The individual while in that IMD setting is not eligible for mental health treatment, and also not eligible for other medical care while they are under the umbrella of mental health treatment. The IMD exclusion is one of the vestiges of discrimination against persons with mental illness that got institutionalized into federal law and is now is part of practice in North Dakota. This study request is to look at the whole issue and determine what the consequences are, what the remedies are, and what should state of North Dakota do moving forward. There are big financial consequences. If we could figure out how some of these people could be on Medicaid and be getting federal reimbursement, it would reduce the state general funding. This is to study further, and to consider action in the next legislative session. Could try to get federal government to change the policy, get a waiver, or build for small public hospitals in our four largest cities that are 16 beds or under and get reimbursement through that method.

Chairman Judy Lee asked who pays for healthcare for people in penitentiary.

Senator Mathern stated they are paid for by the general fund; there is some movement into using some Medicaid dollars for some of those patients.

V. Chairman Oley Larsen stated that one of the questions when applying for Medicaid Expansion or the marketplace is to see if you are incarcerated. If Medicaid won't pay for incarcerations, doesn't this require federal changes.

Senator Mathern assuming incarcerations are broadly looked at, there is a federal policy that does prevent that reimbursement. The federal government under Affordable Care Act passed a demonstration program regarding this issue. This demonstration issue is ongoing right now. They are trying to figure out if they cover these people, will the long term costs go down. The Department of Human Services in North Dakota considered being part of that demonstration project but it wasn't approved by the North Dakota legislature. We now need to hear the results of that report in the federal government. Perhaps the feds will change the policy, and if not, perhaps we need to change our policy in how we interact with the feds.

Carlotta McCleary, Executive Director of the ND Federation of Families for Children's Mental Health (NDFFCMH) testified IN FAVOR of SCR 4021 (attach #1) (10:32-12:40)

Senator Howard Anderson, Jr. what you are saying here is that you don't want these people institutionalized. It may have been the intent in 1965 that we discourage people from being institutionalized. Does this encourage us to put more into the institutions?

Ms. McCleary wouldn't encourage more people to be institutionalized, do believe in the least restrictive environment. When you have people in more restrictive care, often costs also go up. When they are at home, there is more community support and people do better. She would suggest a way to look at making sure people are there for crisis stabilization and are able to move back into the communities. We don't have enough people to do this, or level of care at local communities. Perhaps we need to regionalize things to help with reimbursement but also to help transition back to the community.

Senator Warner stated there would be resistance to build new brick and mortar. Would there be a way to carve out space in existing institutions or private facilities, administer them separately, and create a virtual regional center or would that be seen as a workaround by the federal government?

Ms. McCleary doesn't know how federal government would look at that, but using our existing resources would be best. Don't want to tie to brick and mortar.

Chairman Judy Lee the Olmsted act - the original restriction in 1965 when it was passed it was to encourage smaller group facilities, community based settings. Olmsted had requested least-restrictive settings for all kinds of care. There are economies of scale that we lose with the restrictions.

OPPOSITION TO SCR 4021
No opposing testimony

NEUTRAL TO SCR 4021

Maggie Anderson (DHS) this has been part of Medicaid since 1965. With the incarcerated population in 2011, the legislature passed a bill that is contingent with rollout of the Medicaid computer program. At that time, Medicaid will cover the inpatient costs for individuals who are otherwise eligible for Medicaid who are incarcerated. When they constructed the coverage for the Medicaid Expansion population, and because the law that authorized them to do this through private carriers or through the marketplace, this was carved out in the Request for Proposal when they sought a private carrier. The reason for this, if someone has a very short window of need for care, an inpatient hospital stay, that would be difficult for the actuaries to try to gauge what that cost would be, and what it would do the per member per month premium for everybody else in the plan. The plan is to cover those costs through the traditional Medicaid program - will be able to access the 100% match for those individuals because they are Medicaid expansion. In 2011 when legislature authorized that piece of additional Medicaid coverage, we didn't know we'd have the Medicaid expansion. In penitentiary, there will now be more eligible for expanded Medicaid. On the application, it is asked if someone is incarcerated because someone who is incarcerated at penitentiary or inmate somewhere, they are not eligible for Medicaid other than this inpatient hospital piece. We are working with released individuals discharge so they can access Medicaid when they are released to keep medications going through. Regarding the brick and mortar, today inpatient psych units, neither are considered institutions for mental disease (IMD), because not more than 50% of the beds for the entire facility are for mental illness. The rule is either more than 16 beds or more than 50% of your licensed capacity. Prairie St Johns is free-standing psychiatric hospital; they are an IMD. Sanford Health in Bismarck has an inpatient psych ward which is eligible for Medicaid reimbursement.

Senator Warner so if Prairie St. Johns if they were to associate with another institution virtually, could they be administratively not be an IMD?

Maggie Anderson (DHS) answered likely not. The Federal government watches this very closely. Unless another facility came into the facility and they were less than 50%, then they would no longer be considered in the IMD. She then provided example of Long Term Care facility with mental health - IMD exclusion impacts basic care facilities, Home on the Range, very broad exclusion.

Chairman Judy Lee indicated original intent was to get them into the community.

Closed Public Hearing.

Senator Dever moved a DO PASS to SCR 4021 from the Senate Human Services Committee . The motion was seconded by **V. Chairman Oley Larsen**. No discussion.

Roll Call Vote
6 Yes, 0 No, 0 Absent. Motion passed.

Senator Howard Anderson, Jr. will carry SCR 4021 to the floor.

Date: 02/16 2015
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SCR 4021

Senate Human Services Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Dever Seconded By Larsen

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	✓		Senator Tyler Axness	✓	
Senator Oley Larsen (V-Chair)	✓		Senator John M. Warner	✓	
Senator Howard C. Anderson, Jr.	✓				
Senator Dick Dever	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Anderson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SCR 4021: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4021 was placed on the Eleventh order on the calendar.

2015 HOUSE HUMAN SERVICES

SCR 4021

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SCR 4021
3/17/2015
24971

☐ Subcommittee
☐ Conference Committee

Amanda Nuschia

Explanation or reason for introduction of bill/resolution:

Legislative Management study on how the institution for mental disease Medicaid reimbursement exclusion impacts this state.

Minutes: Testimony 1

Chairman Weisz opened the hearing on SCR 4021.

Sen. Tim Mathern: Introduced and supported the bill. This SCR 2041 suggests that we study the situation of the IMD exclusion. In 1965 when Medicaid was passed in this country, an amendment was made afterward in the middle of the night to exclude people from Medicaid coverage who are in an institute for mental disease. Some say that was related to discrimination against this class of illness. Others say it was related to discrimination or understanding that drug addiction was not a health care problem. Some would say it happened because we had so many state hospitals and Medicaid would have went broke in the first few years had those people been eligible for Medicaid. Regardless of what the reason, the IMD exclusion was in the Medicaid bill which said- persons between the ages of 21 and 64 are not eligible for Medicaid reimbursement. Since that time, there is reimbursement for Medicaid people who go to a general hospital, but there is none for other facilities that have 16 or more beds. All of these facilities who treat people with mental illness or drug addiction cannot be reimbursed because of this IMD exclusion in the federal Medicaid law. The general hospitals essentially do not have enough beds to provide treatment in part because many of the people who have mental illness or drug addiction lack resources. It is sort of a drain on the budget and so they don't increase more beds. This resolution just says we ought to study this issue and there are a few specific reasons: the federal government has a demonstration project going on around the country and we want to get involved, if you cover these people then they don't go to the emergency room in the general hospital which costs so much money compared to treatment days, the overall cost may be less if there was coverage, the cost of the state hospital is general fund dollars- if the IMD exclusion on the federal level is not changed maybe something we should consider is 14-16 bed units instead of the state hospital. This resolution is to look at the bigger picture we haven't seen. It is becoming more important to study it because there are more institutions that are going to fall or move forward based on this IMD policy.

Rep. Porter: I'm unclear in us studying it if the federal government isn't doing anything to change the verbiage that was put in there what we gain.

Sen. Mathern: One of the things we should do is go to our U.S. Senator to change the law. It would also ascertain the exact cost. It would show how many people are showing up at these general hospitals and not getting the appropriate care. Some is conjecture. How many people really misuse that treatment room? It would help get that data. It would also inform us about what really should be the future of the state hospital. There is a concern for getting this closer to community care. What would it cost if we changed the model? That takes study. We have a state hospital that is 100 years old and before we change anything it should be studied. Should the state hospital be transferred to corrections to treat people who have violated the law, drug addicted, and mentally ill? If that were to be the case should we look at smaller institutions where the people would get Medicaid reimbursement. We have scratched the surface but have never done it in light of the IMD exclusion. It used to only affect the state hospital but now it is affecting these other providers. The other part of the study might lead us to conclude that we should get into the demonstration project.

Christine Hogan: (See Testimony #1)

Chairman Weisz: Close the hearing on SCR 4021

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SCR 4021
3/31/2015
Job # 25649

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Steph Schaa

Explanation or reason for introduction of bill/resolution:

Legislative Management study on how the institution for mental disease Medicaid reimbursement exclusion impacts this state.

Minutes: Attachments 0

Chairman Weisz opened discussion on SCR 4021.

Rep. Oversen: I move a Do Pass and to Place on Consent Calendar.

Rep. Fehr: Second.

Vote: Yes 13, No 0, Absent 0.

Rep. Rich Becker: Carrier.

Chairman Weisz closed discussion.

Date: 3-31-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 4021

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☒ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Oversen Seconded By Rep. Fehr

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓		Rep. Mooney	✓	
Vice-Chair Hofstad	✓		Rep. Muscha	✓	
Rep. Bert Anderson	✓		Rep. Oversen	✓	
Rep. Dick Anderson	✓				
Rep. Rich S. Becker	✓				
Rep. Damschen	✓				
Rep. Fehr	✓				
Rep. Kiefert	✓				
Rep. Porter	✓				
Rep. Seibel	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. Rich Becker

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SCR 4021: Human Services Committee (Rep. Weisz, Chairman) recommends **DO PASS** and **BE PLACED ON THE CONSENT CALENDAR** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4021 was placed on the Tenth order on the calendar.

2015 TESTIMONY

SCR 4021

Attach #1
SCR 4021
02/16/2015
JH 23887

Testimony
Senate Human Services Committee
Senator Lee, Chairman
February 16, 2015

Chairman Lee, members of the Senate Human Services Committee, I am Carlotta McCleary, Executive Director of the ND Federation of Families for Children's Mental Health (NDFFCMH), which is a state wide parent run organization that focuses on the needs of children and youth with emotional, behavioral, or mental health needs and their families. As the result of an affiliation agreement between NDFFCMH and Mental Health America of North Dakota (MHAND), I am also the Executive Director for MHAND, whose mission is to promote mental health through education, advocacy, understanding, and access to quality care for all individuals.

The NDFFCMH and MHAND support SCR 4021. We believe people who need mental health services should receive those services in their home and communities, that hospitalization should be utilized as a last resort and that discharge planning occur as soon as an individual enters the hospital. We further believe that the hospitalizations should be located as close to individuals home whenever possible. SCR 4021 could look at the possibility of having smaller regional facilities located throughout the state to meet the needs out on the regions. The smaller facilities could become Medicaid reimbursable unlike the State Hospital.

Thank you for time. I would be happy to answer any questions that you may have

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SCR 4021
3-17-2015 1.1

#1

House Human Services Committee
Senate Concurrent Resolution No. 4021
March 17, 2015
Fort Union Room
Honorable Robin Weisz, Chair

Chairman Weisz and Members of the Committee, my name is Christine Hogan. I am an attorney for the Protection and Advocacy Project [P&A]. The Protection & Advocacy Project is an independent state agency whose mission is to advocate for the disability-related rights of persons with disabilities. We also act to protect persons with disabilities from abuse, neglect, and exploitation.

One of P&A's highest priorities is to ensure the civil rights of people with disabilities under the ADA to receive services in the most integrated setting appropriate to their needs. We support Senate Concurrent Resolution 4021. We believe it is important for our state to understand the impact of the Medicaid "institution for mental disease" exclusion (IMD exclusion), particularly as it relates to the demonstration projects in selected states created by section 2707 of the Affordable Care Act. These demonstration projects are currently testing whether eliminating the IMD exclusion will have a beneficial effect on our nation's health-care delivery system for individuals with serious mental illness.

What is the Medicaid IMD exclusion?

The IMD exclusion prohibits Medicaid from making payments to IMDs for services rendered to Medicaid beneficiaries aged 21 to 64. The historical reason for this exclusion stems from the "deinstitutionalization" movement that began in the 1950s and 1960s. This movement was based on the civil

rights principle that severe mental illness should be treated in the least restrictive setting feasible, and it eventually led toward community-based treatment and the establishment of community mental health centers. Even before that movement, however, federal law had historically placed the responsibility on the states for funding inpatient psychiatric hospitals.

This state-funding policy continued to guide federal legislation, including amendments to the Social Security Act in 1950, under which patients in mental institutions were excluded from receiving federal payments such as Social Security. The legislation establishing Medicaid continued this coverage exclusion, but did allow federal matching funds for inpatient mental health care in psychiatric institutions for individuals *aged 65 and older*. In 1972, amendments were made to the Act that expanded Medicaid coverage to include inpatient care for individuals *under age 21* in "institutions for mental diseases," or IMDs. These amendments, however, maintained the Medicaid IMD exclusion for individuals between the ages of 21 and 64.

Later, in the 1980s, Congress further defined an IMD as a facility with more than 16 beds. The result of this legislative history is that Medicaid currently provides mental health treatment coverage for a large percentage of people with Medicaid, but that coverage is excluded for inpatient treatment of adults aged 21 to 64, and is also excluded for any acute or long-term-care institutions with 17 or more beds that are primarily engaged in providing treatment for mental illness.

Why should the IMD exclusion be studied now?

One of the problems resulting from the legislative policies described above (and other related federal laws such as EMTALA) is that psychiatric hospitals are often forced to provide uncompensated care to individuals who are in need of stabilizing treatment for a psychiatric emergency medical condition. EMTALA requires psychiatric hospitals to accept patients transferred from another hospital so long as the hospital has the capacity to provide stabilizing treatment.

The Medicaid IMD exclusion is also said to be a major factor contributing to the rate of "psychiatric boarding." Psychiatric boarding occurs when an individual with a mental health condition is kept in a hospital emergency department for several hours because appropriate mental health services are unavailable due to lack of outpatient resources and/or inpatient capacity. Anecdotal evidence suggests that psychiatric boarding is a frequent and prevalent problem that can lead to serious consequences for psychiatric patients and to unnecessary hospital costs. Recent studies indicate the problem could grow worse in the future.

In order to address these concerns, Congress, in section 2707 of the Affordable Care Act, authorized a three-year Medicaid emergency psychiatric "demonstration project" that permits psychiatric hospitals in selected states to receive Medicaid payment for providing emergency services to Medicaid recipients ages 21 to 64, who have expressed suicidal or homicidal thoughts or gestures, and who are determined to be dangerous to themselves or others. Under the demonstration projects, participating

states provide payment under the state Medicaid plan to institutions for mental disease that are not publicly owned.

It is important for state and federal policymakers to understand the impact of the IMD exclusion. It was Congress's intent to monitor the demonstration-project states to determine the impact (of eliminating the IMD exclusion) on the functioning of mental-health service systems—in the hope that waiving the exclusion might have a beneficial effect on mental health services, reduce costs, and reduce delays in treatment. If these hoped-for beneficial results do occur, the demonstration projects could be continued and expanded on a national basis.

In closing, I wish to ask for your support for Senate Concurrent Resolution 4021. This study resolution is intended to address the complex health-policy issues that have, at times inadvertently, resulted from the complicated patchwork of legislative policies affecting treatment for serious mental illness that were enacted beginning in the 1950s. Thank you for your attention and for offering me this opportunity to appear before you on this important Resolution. I would be happy to try to address any questions you may have.